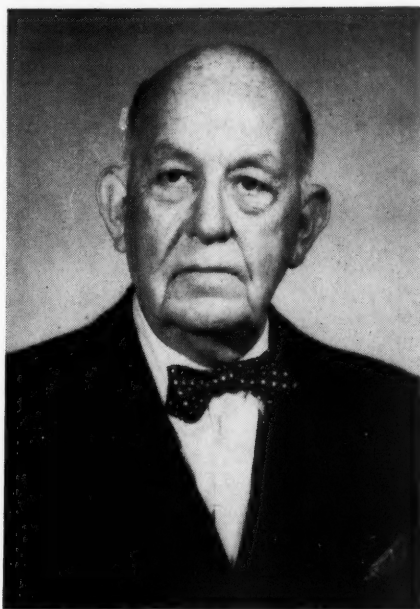


Louisiana Bar ***JOURNAL***



John H. Tucker, Jr.
Chairman
Louisiana State Law Institute

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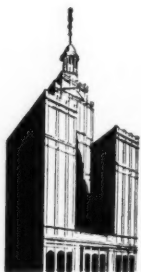
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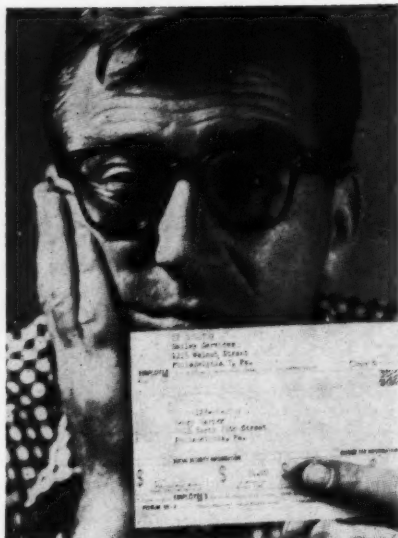
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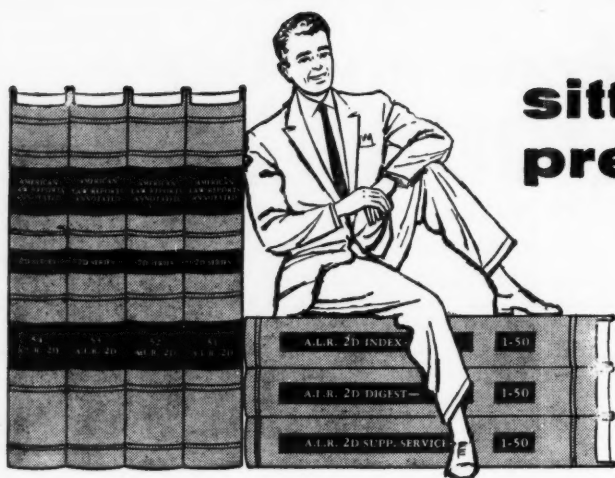
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President's Page

IT IS again my privilege to report to lawyers of Louisiana on the activities of the Organized Bar since the November issue of the Journal.

The Seventh Conference of Local Bar Associations was held in Alexandria on November 22 and 23. The program presented was interesting and informative and was combined with delightful entertainment so typical of the Alexandria Bar. We wish to express our sincere thanks to our hosts for their cordial hospitality, and to all committees, sections and participants who joined in presenting the program which made this Mid-Winter Conference a success.

The House of Delegates held its Mid-Winter Meeting in Alexandria on November 21. The session was well attended and a number of matters of importance to the Bar were considered. The principal discussion related to the proposals to revise the Appellate Jurisdiction of the Courts in Louisiana with a consideration of the various plans which have been advanced.

A special committee of the house studying the subject of the revision of appellate court jurisdiction presented its report, was continued, ordered enlarged, and instructed to continue its study of the question. This committee was directed to report at a special meeting of the House of Delegates to be held on February 15, 1958.

The problem of improving the administration of justice through a proper re-

vision of the jurisdiction of our appellate courts has been receiving careful study by a committee of the State Bar Association as well as by the committee of the House of Delegates and a committee of the Judicial Conference. These committees have met on several occasions, both separately and in conference with each other, in the effort to reach some definite conclusion of this all important subject. The special meeting of the House of Delegates to be held in Baton Rouge at the Bellemont Motel on February 15, will consider the committee reports on this question of revision of appellate court jurisdiction as well as other matters which will appear on the agenda.

Biloxi Meeting

Plans are shaping up for the annual meeting of the Association which will be held on April 23, 24, 25 and 26 in Biloxi, with the Buena Vista Hotel as the headquarters. The first day, April 23, will be devoted entirely to the annual meeting of the House of Delegates. This meeting of the house will be composed of the new members who are being currently elected. They will be installed and begin their term of service at the Biloxi meeting on April 23.

The program of the annual convention meeting of the entire association will begin on Thursday morning, April 24, and continue until the afternoon of Saturday, April 26. The President of

the American Bar Association and a number of other outstanding speakers will address the convention, and the committees and sections are already making definite plans for a series of excellent programs.

This year the Louisiana Law Institute and Louisiana State Bar Association banquet, which is held annually on Thursday evening, will be in honor of the Junior Bar Section, which is in charge of the program to be presented. We know that this banquet will be one of the high points of the convention. We are looking forward to an unusually large attendance and each member is urged to make his reservation immediately upon receipt of the notice from the secretary of the association.

We feel that we are fortunate in securing the services of W. W. Thimmesch, a member of the Louisiana Bar, who has been in active practice for some time, as executive counsel of the association. He began the performance of his duties on December 16, and has been actively engaged in the work of the association since that time. The growth of our membership and the expanded program of the organized bar has added greatly to the administrative work of the association, and in addition to handling much of this additional work, the executive counsel will endeavor to be of service to the members of the bar and to local associations in every way possible. He will also render such assistance as he can in the work of the Committee on Unauthorized Practice and the Supreme Court Committee on Professional Ethics and Grievances.

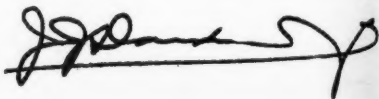
The committee of the association charged with handling matters relating to the New Supreme Court Building

advises that it is now contemplated that the move to the new building should take place during this next summer, with formal dedication ceremonies to be held next fall at about the time of the Opening of Court. The association will move to its new offices in the new building as soon as they are available. At the suggestion of the Chief Justice and the Justices of the Supreme Court, the State Bar Association, along with the Louisiana State Law Institute, is working on plans for the dedication ceremonies.

Through the cooperation of the Justices of the Supreme Court, the Clerk of the Supreme Court and the West Publishing Company, the decisions of the Court are now appearing in the advance sheets of the Southern Reporter within approximately 30 days of the date of their rendition and filing.

The executive counsel of the Association is preparing a complete and up to date draft of the charter and by-laws of the Louisiana State Bar Association which includes all of the recent amendments adopted by the members of the bar. The West Publishing Company has courteously agreed to print in pamphlet form and free of charge this draft of the charter and by-laws of our association.

As a result of the untiring and unselfish effort of the members of our association, it is felt that the organized bar in Louisiana will, with increasing force, effectively express the voice of the legal profession at the bar of public opinion, and in the field of lawyer-client relations.



Trial by Jury

by Edwin Willis

THE origin of trial by jury is disputed by historians. It is evident, however, that the principle of trial by jury emanated from the sense of justice and fair play of our ancestors. This is clear when one studies the forms of trial that existed among all nations in primitive times.

As far back as the ancient days of the Greek and Roman emperors we can discern modes for the settlement of disputes which resemble our concept of modern juries. The Roman Tribunal was somewhat similar to the modern jury but they employed men possessed of legal knowledge in place of a formal judge. The Romans also had a procedure comparable to our present system for challenging jurors.

The old custom of the Roman emperor in summoning before him persons who lived in the neighborhood to declare under oath their knowledge with respect to facts of public interest was indeed the germ of the modern trial by jury.

Right of Examination

In the early middle ages this Roman procedure was employed on ecclesiastical questions by Frankish bishops and by Charlemaine and the other Frankish kings in connection with civil issues. Some centuries later we find virtually the same custom in the Inquisition processes employed by the Norman dukes.

I digress to point out another right which not only implements the jury system, but without which jury trial would be completely ineffective. I refer to the right of an accused to confront and cross-examine his accusers. We have it on

highest authority that this particular right was derived directly from the Romans. Except for it, one of the most courageous and profound of all the early Christians would have been doomed to die on the cross, as did the Master before him.

At the second trial of St. Paul before Festus, the so-called witnesses did not testify. Instead Tertullus, the orator, made this argument:

"We have found this man to be a pest, a promoter of sedition among all the Jews throughout the world, and a ring-leader of the sedition of the Nazarene sect."

Paul said, "I am standing at the tribunal of Caesar; there I ought to be tried. To the Jews I have done no wrong, as thou thyself very well knowest. For if I have done any wrong or committed a crime deserving of death, I do not refuse to die. But if there is no ground to their charges against me, no one can give me up to them; I appeal to Caesar."

Then Festus, the Roman Governor, made this ruling:

"Thou hast appealed to Caesar; to Caesar thou shalt go . . . Romans are not accustomed to give any man up before the accused has met his accusers face to face and has been given a chance to defend himself against the charges."

Mr. Willis, of St. Martinville, is a member of the House of Representatives from the Third District. He was a featured speaker at the Alexandria meeting.

But, regardless of the true origin of trial by jury, there is no dispute that the system, as we know it today in America, was derived from England.

During the reign of Alfred the Great, from 871 to 901 A.D., we can find semblance of settlement of disputes by juries. But the common law system of trial by jury developed from the 10th to the 16th centuries. William the Conqueror employed the jury system, as it existed in 1085, in compiling the Domesday Book.

In the early days trial by jury was not a matter of right, but merely a privilege, to be granted or withheld as a favor of the king. Henry II did encourage jury trials during his reign in the latter half of the 12th Century. He also employed a jury for indicting those individuals who had violated the king's peace by the commission of serious crime.

During this period of development the function of the jury was not to render a verdict but to supply evidence on oath as witnesses do today. The ancient jury was very similar to our modern concept of the grand jury, to the extent that the evidence amounted to an indictment.

Until the 13th Century, however, this indictment by the jury was followed by a trial by ordeal, battle or compurgation. It was dissatisfaction with such modes of trial, and the opposition of the church, which finally led to the acceptance of the opinion of a second jury, a deciding one. Here we see a resemblance of our petit jury.

Modern System

The abuses of King John resulted in changing the privilege of a trial by jury to a right. This ended the practice of selling and buying writs, which had flourished under him. The Magna

Carta, granted at Runnymede in 1215, provided that no free man should be impoverished, dispossessed or in any way detained, except by the fair judgment of his peers and according to the law of the land. Here was the true beginning of our system of trial by jury, as a fundamental right.

The history of trial by jury during the middle ages is replete with incidents of abuse of, and hostility for this system by kings and their ministers. They converted the process of attain, which was originally devised to provide extra protection for the accused and to be a royal weapon against the corruption of justice, into an attack on the jury itself. Thus, if they considered a verdict by a jury unjust, they preferred charges against its members and tried them before the Star Chamber Court, which functioned without a jury. That court over the years became an instrument for religious and political persecution. That institution, with its denial of a jury trial, was one of the main causes for the downfall of Charles I and his ultimate beheading.

In 1641, when Parliament obtained the upper hand, one of its first acts was to abolish the Star Chamber Court and to assert the right of every Englishman to a fair and open judgment by his peers. It also abolished the right to punish jurors for verdicts considered to be unjust, and substituted therefor the remedy of a new trial. Actions of attain were prohibited in 1670 in the famous Bushell case when a judge attempted to imprison a whole jury for a verdict with which he disagreed.

THERE were other instances of intimidation of juries during these years. The actions of Bloody Judge

Jeffries were notorious. However, public acceptance and confidence in the verdicts of juries overcame all such attacks. Able and courageous leaders of the English Bar, such as Erskine, Coke, Bacon, Burke and Fox led the fight to preserve the sanctity of jury verdicts.

During and after the French Revolution, fear of revolutionary elements led to repressive censorship and limitations of civil liberties in England. In 1793 habeas corpus in certain cases was suspended. Fox led the movement which resulted in repealing the suspension.

Powers Extended

In 1792, Fox had also been responsible for a new libel law which extended the power of juries to decide the whole case, both as to the law and the fact. Here, indeed, was a victory for democracy and trial by jury. And since the beginning of the 19th Century, there has been very little threat to the right of trial by jury in criminal cases in England.

The old adage that distance lends enchantment did not apply among the American Colonists in their relationship with the English Crown. Although the same conditions on the whole prevailed in Colonial America as in 18th Century England, with respect to the administration of justice and trial by jury, the attitude of the colonists was from the beginning different. Being in no position to fear feudal exactions or exploitations, the colonists looked upon the king not as their protector but rather as the potential aggressor upon their rights. In this spirit they protested every effort to curtail trial by jury as an act of tyranny.

Thus, the English Parliament passed the famous Navigation Acts and in 1696 reorganized the Admiralty Courts so as

to better cope with flagrant smuggling in and out of the colonies. These Admiralty Courts, however, were not part of the traditional common law system and did not provide for a trial by jury. As a result, English or English-appointed judges frequently sentenced American seamen and merchants arbitrarily. The more effective these courts became, the more the colonists resented them and the more they came to insist upon trial by jury as a fundamental right.

The Stamp Act of 1764, offensive enough in its imposition of taxation without representation, added insult to injury by providing that all violators were to be tried in the Admiralty Courts where trial by jury is not provided. The Americans did not accept the British view that Parliament was completely sovereign, and could constitutionally pass any measure it chose. In their eyes, the Stamp Act was, among other things, a clear effort to by-pass and thus to deprive them of the right to trial by jury. The reaction against it was so strong that it prompted the colonies to pass acts of nullification. The Virginia Resolution, introduced by Patrick Henry, the Stamp Act Congress, and above all, the boycott of all English merchandise, forced the repeal of the Stamp Act.

This effort on the part of the English Parliament to by-pass jury trial was to be repeated by the American Congress almost 200 years later in connection with so-called civil rights legislation, except that equity instead of admiralty courts were to be the instrument.

The final British effort to tamper with the traditional trial by jury in the colonies came with the misnamed act for the impartial administration of justice. This was one of the intolerable acts

passed in 1744 as a retaliatory measure for the Boston Tea Party. This act provided that certain offenders were to be transported to England for trial there. This repudiation of the colonists' own right to judge their fellow citizens was one of the last acts which made reconciliation with England impossible, and thus provoked the war for American independence.

Right Preserved

It was in the light of this background that the founding fathers were determined to preserve and perpetuate the jury system when our constitution was adopted.

It is illuminating to note, however, that there was no real controversy in respect to trial by jury in criminal cases. In fact, jury trial in criminal cases was provided for in Section 2 of Article 3 of the original constitution. The seventh provision of the Bill of Rights refers to trial by jury in civil cases. Here the colonists were erecting a barrier against extension of any power, even in civil cases, comparable to that which had been vested in and exercised by the admiralty courts during the domination of England.

Jefferson was in Paris at the time of the adoption of the original constitution. During the time of the great debates on the proposition to ratify the original instrument in the conventions of the several states, Jefferson wrote from Paris to a friend:

"There are instruments for administering the government so clearly trustworthy that we should never leave the Legislature at liberty to change them. The new Constitution has secured these in the executive and legislative depart-

ments, but not in the judiciary. It should have established trials by the people themselves—that is to say—by jury."

Accordingly, our forefathers imbedded jury trials even in civil cases as part of the Bill of Rights. And the constitutional guarantee of the right to jury trial has withstood the most severe stresses and strains in our turbulent history.

Thus, the fear of the panic created by the French Revolution hit America with such force that it prompted the passage of the Alien and Sedition Laws dealing with treason, and curtailing the right to criticize our Government. But devotion to the principle of trial by jury was so deeply imbedded in the minds of our ancestors that no one had the temerity to suggest the elimination of trial by jury under these laws.

System Never Suspended

In fact, in our entire history, when the greatest of threats have been leveled at the very existence of our government itself, trial by jury has never been suspended; not even in war time. It was preserved during the trying days of the Revolutionary War, the War of 1812, the War Between the States and through two World Wars.

It is this deep-rooted belief in trial by jury that is responsible for the law and jurisprudence to the effect that citizens cannot be tried by the military courts in this country.

There is one exception, however, to this history of trial by jury in America, and that is during the reconstruction era. It was the most flagrant example in our history of a peacetime suspension of the right of trial by jury. It was accomplished by the establishment of military



Pictured here are the three judges serving on the First Circuit Court of Appeal. Members of the court, left to right, are Morris A. Lottinger, of Houma; Robert S. Ellis, Jr., of Amite, and Albert Tate, Jr., of Ville Platte.

governments in areas where fighting had ended. But the excesses of the military governors and of the carpetbaggers and scalliwags who surrounded them aroused public hostility. This deliberate repudiation of all the philosophy upon which the Constitution was conceived caused the reconstruction acts to be condemned by all men of good will.

Erosion of Rights

Despite the provision of the Bill of Rights, however, trial by jury has been gradually eliminated in civil proceedings before so-called administrative bodies and tribunals. The Honorable David F. Maxwell, former President of the American Bar Association, had this to say on the subject:

"For some time I have been deeply concerned by the insidious process which has been gradually eroding our right to

trial by jury in civil cases. The right of trial by jury is firmly imbedded in the American system of jurisprudence and is as old as the country itself. Reference to it is found in the Declaration of Independence, which deplors the abuses and usurpation by George III 'depriving us in many cases of the benefits of trial by jury.' Article VII of the Bill of Rights guarantees trial by jury 'in suits at common law, where the value in controversy shall exceed twenty dollars.'

"Yet, during the past half century, bit by bit, there has been a whittling away of jury jurisdiction. Arbitration has replaced the jury trial in many areas, notably in the motion picture, building trades and textile industries, and generally in the field of labor law.

"Various administrative bodies and tribunals, both on a federal and state level, are determining the rights of citizens in

a manner affecting their everyday lives, without the benefit of juries. In Saskatchewan, Canada, such a board is vested with authority to award damages in automobile accident cases on the basis of liability without fault, and there are many authorities in this country advocating the adoption of a similar system here. The Compulsory Arbitration Act in Pennsylvania, adopted in 1952, provides that the trial court may, by appropriate rule, substitute arbitration for trial by jury when the amount in controversy is \$1,000 or less, and the constitutionality of the act has been upheld by the Supreme Court of that state."

As one of those who firmly believes in trial by jury, I, too, was concerned about recent attempts to limit and circumscribe this constitutional right of our people.

Civil Rights Actions

Thus, we heard and learned a great deal about the precious right of trial by jury during the debates on so-called civil rights legislation in the Congress last year. A discussion of civil rights is, of course, beyond the scope of this assignment, but I mention our experience because it provided a new meaning to jury trials as a fundamental right.

The question was not whether, *after* trial of an injunction suit on its merits, a person charged with contempt of court for violating the injunction decree is entitled to be tried before a jury. And no amount of specious argument by the proponents of the bill could make it so. The proposition was whether we should substitute an initial civil remedy for a present criminal prosecution as was accomplished through the admiralty courts during colonial days.

Thus, for the last 70 years or more a person charged with depriving another of any conceivable civil right, including his right to vote, can be prosecuted and tried, but only before a jury of his peers. Forsaking principle for expediency, Mr. Brownell, the Attorney General of the United States, took the position, however, that the jury system is no longer to be trusted in so-called civil rights cases.

New Remedy Created

Accordingly, a new remedy was created. But, mind you, the new cause of action is not granted to the persons aggrieved. It is to be exercised exclusively by the attorney general. The class injunction suit is to be filed in the name of the United States against the people of a whole community and the action can be brought without the consent and even over the protest of the real parties at interest, a reprehensible practice for which a lawyer could be disbarred.

Stated differently, the real issue was whether Congress could, as a matter of good constitutional law, or should, as a matter of cynical Congressional policy, pervert equity courts as criminal tribunals.

We did succeed in providing a jury trial in certain criminal contempt proceedings which can result in imprisonment. From my point of view, the jury trial provision is far from satisfactory, but it was the best we could imbed in the so-called Civil Rights Bill. In any event, if this limited provision can serve as a challenge to succeeding Congresses and to the members of the bar to continue the fight against further erosion of jury trial as a fundamental right, I think our efforts will not have been in vain.

Payment of Delay Rentals

by Horace Holder

THIS study is confined to a consideration of the "change in ownership" provision in oil and gas leases, as it relates to leases granted by an executor or administrator of a deceased person with reference to property belonging to the estate of the deceased person; and, leases granted by a trustee with reference to property belonging to the trust estate.

The "change in ownership" provision of a lease has been included in most standard lease forms for a number of years as follows:

"The rights of either party hereunder may be assigned in whole or in part, and the provisions hereof shall extend to the heirs, successors and assigns of the parties hereto, but no change or division in ownership of the land, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of lessee; and no such change in ownership shall be binding on lessee nor impair the effectiveness of any payments made hereunder until lessee shall have been furnished, forty-five (45) days before payment is due, a certified copy of recorded instrument evidencing any transfer, inheritance, sale, or other change in ownership." (Bath's La. Spec. 14-BR1-2A)

Added Provision

In more recent leases, a clause has been added at the end of this provision and separated by a semicolon as follows:

". . . inheritance, commencement or termination of minority or interdiction, and dissolution of any community of acquets and gains shall be considered changes in ownership of which the evidencing 'instrument' shall be the pleadings and judgment in an appropriate judicial proceeding, setting forth all relevant facts, except that the attainment of the age of majority may be evidenced by a certified copy of birth

certificate . . ." (Bath's La. Spec. 14B-R Bath A-50)

It seems that the "change in ownership" provision as first quoted, when taken in conjunction with the other pertinent provisions of a lease pertaining to delay rental payments, should operate in such a manner, that the lessee would be entitled to consider as lessor the person actually executing the lease, and who by the provisions of the lease is designated as "lessor" for payment of delay rental. Any change in his right to receive such payment would be covered by the "change in ownership" clause. Under this construction the results attempted to be accomplished by the more recent addition to the "change in ownership" provision, would be accomplished by the clause as originally written in the standard lease forms.

Doubtful Construction

If such is the intentment of the provision as originally written, and without the amendment, the question remains as to whether or not it accomplishes that result? That there is doubt, is evidenced by the fact that some draftsmen have added the amendment above referred to. It must be admitted that this construction is not free from doubt, since the provision uses the phrase "change in ownership", and under a strict application of Civil Code Articles 488 to 494, defining ownership, a change in the right of a person to receive delay rentals

might not necessarily be a "change in ownership."

On the other hand a broad construction of "change in ownership" could include a change in the right to receive rentals, on the theory that dominion, control and/or possession is an attribute of ownership and that anyone who possesses a right to any of those attributes must necessarily be held to possess an attribute of ownership. In this connection there is an interesting discussion of this subject in Cross, *On Succession*, Chapter II, "The Seizin of Succession," Section 35 *et seq.*, and, Cross, *On Pleadings*, Sec. 403, entitled "Possession."

The Parker Case

THE lessee in paying delay rentals, aside from the lawyer's insurance of a dual payment, is interested only in what he can safely do to protect his interest. In the absence of a definitive interpretation by the Court, he must necessarily accord a strict construction to the "change in ownership" provision.

As to whether the decision of *Parker v. Ohio Oil Co.* 191 La. 896, 186 So. 604, (1939) is definitive, it should be understood in considering this decision that the Court was concerned with royalties and not delay rentals.

Although at one place the Court referred to the royalty as "rental," and in theory there is no distinction, yet the resultant effect of a failure to pay is governed by different principles. Thus in the *Parker* case the plaintiffs were not asking for a cancellation of the lease; but most important, it does not appear from the report of that case, that the lease there involved contained a "change in ownership" clause. The lease was granted in 1919 and this case was decided before the Court's decision in the

case of *Jones v. So. Nat. Gas Co.*, 213 La. 1051, 36 So. 2d 34, (1948) where the Court appeared to have adopted the equitable doctrine of preventing a forfeiture of a lease, where the failure of the lessee to properly pay delay rentals within the time stipulated is the result of a mistake on his part, and where the circumstances are such that the mistake is a pardonable one, thus requiring the lessor, upon learning of the mistake, to inform the lessee and afford him an opportunity of correcting it.

In refusing to apply this doctrine in the case of *Atlantic Refining Company v. Shell Oil Co.*, 217 La. 576, 46 So. 2d 907, (1950), the Court placed a great deal of emphasis upon the failure of the lessee to immediately make a correct payment upon learning of the "mistake." It should not be inferred that the *Parker* case need not be considered by the lessee, as that decision relates to the question of the proper payment of delay rentals in leases granted by administrators, executors and trustees. This decision is one of the most important.

Lease Limitation

Express statutory authority for a lease executed by a succession representative was first granted by Act 129 of 1936, which, however, contained an express limitation on the duration thereof, by providing in part:

"... provided that no lease executed under the provisions of this law shall be binding upon the heirs, devisees, legatees, or distributees of any estate, or on purchasers from said estate, unless actual development has been commenced prior to the time the said estate is distributed and provided such actual development is being, and continues to be, prosecuted with reasonable diligence

thereafter."

The repeal and re-enactment of this act, by Act 110 of 1948, R.S. 9:1491-1493, deleted this provision, and the commentaries are in agreement that there is now no limitation on the duration of such a lease, and hence it will encumber the property in the hands of the heir, legatee or purchaser at a succession sale of the property.

Officer of Court

Under the express provisions of the statute, the succession representative grants the lease. A succession or estate is not an entity or person, and has been held incapable of being a party to a contract. Contracts made by succession representatives are considered the contracts of the representative, even though made with testamentary and/or court authority.

The succession representative is an officer of the court, and while he is a representative, he is not agent of the heirs or creditors, in the agency sense of the word; this is true even in the case of an executor appointed by will, for here he only derives his authority or mandate from the deceased. It should not be implied that he is not in some instances charged with the fiduciary or agency relationship as respects the heirs and the creditors.

When such a lease is executed, where is the ownership at the time of execution of (1) the property itself, and (2) the rentals which accrue thereafter? Usually the right to receive the rentals, at the time a lease is executed, is but an incident of the ownership of the land leased. As the title to the succession property and the proceeds therefrom under the doctrine of *le mort saisit le vif*,

vests immediately in the legal or testamentary heir, no part of the title of the succession assets vests in the succession representative, even in the case of an executor with seizin. This ownership is not unqualified or unconditional, since it is subject to the administration of the succession.

Conditional Ownership

In the case of *Crochet v. McCamant*, 116 La. 1, 40 So. 474, (1905) the Supreme Court recognized that in addition to the classifications of perfect and imperfect ownerships as found in the code, there could also be "imperfect and conditional and defeasible ownerships," resulting from Articles 2021 to 2025, 2028 and 2041. Hence the ownership of the property is conditional, and upon the termination of the administration or "succession or estate" concept, whether by completion of the administration or unconditional acceptance of the succession by the heir or legatee, the prior title in the heir of legatee thereby becomes perfect, and free of condition or qualification. Thus there has been a "change of ownership," and to this extent the lessee should be protected by the "change of ownership" clause.

Considering the other aspect of the problem, the act specifically grants to the succession representative the right to grant the lease. The succession is not a legal "person" or legal entity, the succession representative, to the extent he is an agent, is an officer of the court, and therefore, from the agency standpoint, the state is his principal. It seems to follow that he is the "lessor," initially when the lease is given. Clearly, he is initially entitled to the delay rental, since he is entitled to the proceeds from the

property under his administration, except in the instance provided by Article 1631 of the Civil Code, which provides that: "The interest or proceeds of the thing bequeathed shall accrue to the benefit of the legatee, from the day of the decease, without his having brought suit for the same: (1) When the testator has expressly declared in his will to that effect."

TO what extent is the lessee protected by the "change in ownership" clause where the administrator or executor is removed, resigns, dies, or forfeits his appointment by absence? It would seem that the lessee, if he knows in time, could protect himself by paying into court under a court order. But is he entitled to rely upon the "change in ownership" clause, and continue to deposit to the credit of the original succession representative, until served with a certified copy of an instrument evidencing the termination of his representative capacity? Obviously under a strict construction of the phrase "change in ownership," this would not constitute such a change, and therefore a lessee is not entitled to rely upon the "change in ownership" clause under these circumstances.

In considering the subject of oil and gas leases as respects trust property, for convenience, all references to sections of the "Trust Estates Law" will omit the title reference which in all instances is Title 9.

Vested With Title

Section 1811, which provides for a creation of a trust, whether testamentary or intervivos, states this is done when "a person . . . transfers the legal title to

property to a trustee for the benefit of himself or a third person." In light of the "transfer of title" to the trustee, there can be no question but the trustee is in fact vested with a "title" of some classification. In the case of *United States v. Burglass*, 172 Fed. (2d) 960 5th (1949), Judge Lee, in speaking for the Court relative to the Louisiana "Trust Estates Law," where the trustee was a beneficiary of the trust, said:

"After the probation of the father's will creating the trust, ownership of the property was in the appellee and his coheirs, but the legal title was in the trustees, the trustees holding the property for the benefit of the appellee and his coheirs (cestuis que trust).

"The Government argues that the appellee, being one of the three trustees, did not administer either of right or in fact; that the trustees administered in an official capacity; hence, appellee did not have the administration and enjoyment of the trust property necessary to convert the income to community property under Art. 2402 of the Civil Code. We think it clear that in the exercise of his rights, the trustee must administer the res, to the exclusion of the owner (cestui que trust); hence, the law constitutes the trustee, in effect and with respect to the right of ownership, the agent or representative of the owner, imposing upon him the obligation of an administrator. The Trust Act requires the trustee to take due care of the property entrusted to him and to discharge faithfully his obligation as trustee. Failing in either or both, the owner (cestui que trust) may call him to account and hold him responsible in damages. As between the beneficiary and the trustee, the trustee has the actual administration, but his administration is for and on behalf of and for the



Members of Louisiana's Second Court of Appeal are pictured above. Left to right, they are: Judge Edward L. Gladney, of Bastrop; Judge George W. Hardy, Jr., Shreveport, and Judge Harrison W. Ayres, Jonesboro.

account of the beneficiary; his acts, therefore, are the acts of the beneficiary. As the receipt of fruits, issues, or profits constitutes enjoyment, we think the husband-beneficiary had the administration and enjoyment, in law and in fact, of the effects of the trust estate."

The above quotation should be subjected to some fundamental questions. As the trustee has the "legal title" and the duty of administration of the trust it would seem apparent that the trustee's relation to payment of delay rentals, from a lease on trust property, is such that the creation of a trust constitutes a "change in ownership." Where a person creates an inter vivos trust with himself as the sole beneficiary and an independent trustee, it would appear that for purposes of delay rentals there has been a "change of ownership."

For the payment of delay rentals

where property subject to a lease thereafter becomes subject to a trust, it seems correct that this would be such a change in ownership as would require that a copy of the trust agreement be duly served upon a lessee. The only problem that suggests itself would be where the trust is created but no trustee is named, nor has one been appointed by the court. Under this circumstance, the lessee would be protected by depositing the delay rentals simply to the account of the "Trustee of the trust created by John Doe under the provisions of, etc.," since Section 1992 expressly provides that absent a provision in the agreement, or order of court "all powers of a trustee shall be attached to the office and shall not be personal."

Before further considering this subject, it should be observed that wide latitude is permitted the settlor in creat-

ing a trust. The considerations discussed and the conclusions reached are with reference to the Trust Estate Law.

Continuance of Trust

In the absence of a contrary stipulation, under Section 1921, a trust continues even though the beneficiary dies, hence the lessee need not concern himself with possible changes in beneficiaries during the term of the trust. However, an interesting question is raised in this respect, upon the termination of the trust. Thus where there have been several changes in the beneficiary during the term of the trust, would the beneficiary at the termination of the trust be required to serve instruments whereby his title is derived from the original beneficiary under *Pearce v. So. Nat. Gas Co.* 220 La. 1094, 58 So. (2d) 396 (1952) or only evidence of the termination of the trust?

As respects Section 1992, which provides that, aside from a stipulation in the agreement or court order, "all powers of a trustee shall be attached to the office and shall not be personal," a delay rental deposit payable to the "trustee" in conjunction with a proper description of the trust, and without the name of the trustee should be proper. Thus the possibility of a questionable payment where there has been an unknown change in the trustee would be avoided. In this respect it should be observed that Section 1993 provides that if there are two trustees, the powers conferred should be exercised by both, hence caution should be used to determine whether there is one or more trustees, and to make the deposit to the "trustee" or "trustees" depending upon the number designated.

On the question of the termination of

a trust, the "Trust Estates Law" makes no provision concerning the requirement of an act of conveyance from the trustee to the beneficiary. Section 2161 makes provision for the recordation of the instrument creating the trust. This raises the question of whether upon the expiration of the term it is necessary to execute an instrument conveying title from the trustee to the beneficiary, or does the title simply vest in the beneficiary, as in the case of a death and title vesting in the heirs? Certainly there is a change in title, and change in ownership, as respects the "change in ownership" clause of a lease, as it relates to the payment of delay rentals. The serious question is whether the terms of the trust instrument itself, which the lessee would seem to be charged with knowledge of, is sufficient where the trust expires through the mere passage of time.

It could well be argued that a "de facto" trust continued until there was an instrument recorded transferring the property to the beneficiary, as in the cases of corporations where the charter has expired. However, to be safe, the lessee should pay the beneficiary. Where the trust terminates as the result of an uncertain event, the laws of recordation should protect the lessee, and his continued payment to the trustee should be effective.

In conclusion, there does not seem to be any question but what a revocation, or, modification of the trust, where these rights are reserved, should be served upon the lessee, since to the extent they would affect or alter the payment of delay rentals, they would also affect or alter the title to the delay rentals, and therefore constitute a change in ownership.

Use of Demonstrative Evidence On Behalf of Defendants Cited

by Newton Gresham

THE subject assigned to me naturally implies that I am a defense lawyer. To that charge I proudly plead guilty, but I much prefer to be classified not as any particular type or brand of lawyer, but simply as a lawyer. We are first and foremost all members of the bar. The particular type of practice we do is secondary.

I am not sure how it is in Louisiana, but I am certain in my own mind—and have been rather outspoken on the subject—that a good many of the ailments which plague the Bar of Texas will disappear when we quit acting and thinking as plaintiffs' lawyers, or defendants' lawyers, or criminal lawyers, or land lawyers, or oil and gas lawyers and so on ad infinitum and start thinking of ourselves corporately, as members of a unified bar, pledged to the administration of justice, true advocates for our clients, but above all officers of the court.

Useful Weapon

So much for that. But I do want in the beginning to make the point, clearly and unequivocally, that the proper and effective use of demonstrative evidence does not belong alone to any type or division of the trial practice. It is not the peculiar sword of the plaintiff. It is a weapon equally useful to the defense. If an idea can be gotten to the jury or the court better by demonstrative evidence and if that demonstrative evidence comports with counsel's sense

of fair dealing and propriety, and if it is both relevant and trustworthy, then the trial bar should make use of it. But the subject is demonstrative evidence from the standpoint of the defense. So let us have at it.

We should start this discussion by keeping in mind that the law is by no means a stagnant pool. It is a moving stream and the channels through which it moves are being directed and will continue to be directed by a great many influences. The teachers in our great law schools undoubtedly are doing much toward shaping the course of the law. Likewise, the judges of our appellate courts have much to do with it and one must not forget that the trial judge on the bench, even though he never writes an opinion, is nonetheless a potent force in directing the development of our law for good or bad. But, over and above all of these influences, it is my belief that our law takes and will take in the future its main direction as the result of the efforts of the individual practitioners in the trial court—the efforts of the trial lawyer, the man at the bar—as exemplified by the way the trial lawyer thinks, the way he acts, the way he develops his thinking in the courtroom and in his dealing with the courts.

We have all been impressed by the fact

Mr. Gresham is a member of the Houston Bar. His paper was presented at the Alexandria meeting at the session sponsored by the Section of Insurance.

that the plaintiffs' bar, through their organizations, the chief of which is NACCA, all through their publications, the most important of which is the NACCA Law Journal, are demonstrating that the practicing bar can direct, change and develop our legal thinking and the law itself.

Healthy Procedure

By the same token and with the same measure of effectiveness, defense counsel can do much toward directing the law and toward advancing in the proper channels our entire jurisprudence. Defense counsel can and should see that our law, and particularly the use of demonstrative evidence, proceeds along the lines we consider healthy and in the manner we want it to develop.

If, as I believe, demonstrative evidence belongs to and should be used in the defense of personal injury cases as much as in their prosecution, it behooves those who represent defendants to give increasing attention to this intriguing subject and to develop some very definite attitudes and plans about it.

Since the Second World War and the appearance of NACCA, some new words have been added to our vocabulary. I do not think I had heard of "the adequate award" before NACCA. I had never heard "demonstrative evidence" before that time, but it is simply a new label put on an old article. Actually, we have had demonstrative evidence since modern jury trials began. Certainly we have had it ever since I have been observant of jury trials. The germ was there 25 years ago, and in the main the same things were there. Those plats which show intersections at which accidents have occurred and the use of X-

rays on the viewbox to explain bone injuries were common in Houston in 1930 and 1935, and so I suppose they were all over the country. So demonstrative evidence is not new. The label, however, and the extremes to which it has been carried and the manner in which it is being used are new.

Courtroom Theatrics

The trouble, as I see it, is that enthusiasm over a new technique has caused demonstrative evidence all too often to be carried beyond its legitimate bounds. There has been an observable tendency to transform demonstrative evidence into dramatic evidence. When it ceases to be real evidence designed to throw light on what the real truth is and becomes a theatrical performance, then it loses its proper place as demonstrative evidence and becomes theatrical or simply dramatic evidence.

The use to which certain flamboyant exponents of the "more than adequate award," for instance, have put demonstrative evidence in what I believe is a perverted sense is known to all of you. Until recent years, although it may have been done in isolated sections, I had never heard of one bringing a skeleton or a model spine into the courtroom, not, as I see it, for the purpose of making the jury better acquainted with the human body or making a doctor's testimony more understandable, but primarily to excite sympathy or stir up feeling or unduly to put emphasis upon horror.

Many of you are familiar with a story widely told around the country in recent years. I am sure it happened. I believe it is traceable to Mr. Belli. He tells of bringing an artificial leg into the courtroom wrapped up in butcher's



Serving on the Orleans Court of Appeal are the following judges, left to right: Richard T. McBride, George Janvier and Godfrey Z. Regan, all residents of New Orleans.

paper and then taking it out and waving it before the jury and passing it around among the jury for them to feel and take hold of, delivered along with some inflammatory argument. This is illustrative of the perverted use to which demonstrative evidence can be put.

But I am thoroughly impressed with the fact that a lot of able plaintiffs' lawyers in this country are making legitimate and effective use of proper demonstrative evidence. They are showing a great deal of ingenuity and imagination and are getting a great deal of effectiveness from it. I know we have some in our area who are going to much pain and study in getting elaborate models and other devices of real benefit to their cases.

We of the defense must accept the fact that we are dealing with able men who are going to use every possible device

and every legitimate means of promoting demonstrative evidence. Only when we realize we are dealing with that problem are we in position to know what we are going to do about it and how we are going to meet it and what use we are going to make of it.

Demonstrative evidence is evidence which is received through the eyes or other senses than the ear. Any evidence, anything that is evidence, which can be received through the eyes rather than the ears can be properly classified as demonstrative evidence.

To show what in my judgment is the legitimate scope of demonstrative evidence, I think every one of you should know that Corpus Juris has long carried a reference to demonstrative evidence, and from Corpus Juris Secundum, I have copied out two brief paragraphs:

"What the courts will allow the jury

to see is largely within the administrative function of the judge who will permit the use of the courtroom for deviation from the usual routine of trials only when satisfied that the interests of substantial justice warrants him in doing so. * * *

"Demonstrative evidence should be admitted only where it is of real assistance and will not likely be given undue weight by the jury. It should not be admitted merely to arouse feelings, as by unduly exciting antipathy or sympathy."

You will note the language: "It should not be admitted merely to arouse feelings, as by unduly exciting antipathy or sympathy." Well, in that requirement it seems to me are the proper bounds of demonstrative evidence. The probative effect of it should never be outweighed by its prejudicial effect.

IF trials are to be more lively, not in the sense of a circus performance, but livelier in the sense of exciting reasonable interest, of keeping people alert to what is going on, of eliciting the interest, as distinguished from the sympathy or antipathy of the jury, I think there is a place for demonstrative evidence. We must realize, in the very beginning, however, it is the proper function of defense counsel to use every legitimate means at his command to keep it within its legitimate scope. There ought to be a determined battle by the defense all the way through the trial against illegitimate, unwarranted demonstrative evidence. This fight can be started at the pre-trial by insisting upon knowing what is going to be used and by asserting strongly the available objections, not only technical objections, but also the objection that its probative effect is outweighed by its

tendency to excite sympathy. It can be fought by proper objections, by "a digging in the heels and standing up and hollering" fight on it, and the trial lawyer, if he stays with it and refuses to adopt the defeatist attitude, can thus often be surprisingly effective. And not only must this fight be made at the pre-trial and the trial, but by the same token on the motion for new trial and all the way on appeal.

Fight Improper Evidence

I am preaching that none — and particularly the defense — should adopt a defeatist attitude in combatting the misuse of this type of evidence. Improper demonstrative evidence can be fought and it ought to be fought where it is illegitimately used.

Some of the courts are being very sensible on the subject. An example is a case from Illinois — (*La Prise vs. Carr-Leasing, Inc.* 62 N.E. 2d 26). Here was a situation where in a death action the plaintiff wanted to bring in a photograph showing the deceased lying on the ground. He had been killed on the street. There were his dinner pail and his bloody hat and his shoes, which had been knocked loose from him, and his torn clothes — a horrible picture. The plaintiff offered that picture in evidence and submitted as a reason for its admissibility that it showed the position of the body and how the dinner pail had been knocked away by the force of the impact, and so on.

A resolute trial judge refused to admit it because he said its probative effect was outweighed by the sympathy angle, because the police chief had already testified without contradiction as to where the body was and where the

shoes were and it was all before the jury and the facts were proved and the photograph was merely an effort at a build-up or a circus performance.

I might just in passing mention a recent Texas case about the use of blackboards. The case is Warren Petroleum vs. Piatt, by the Texarkana Court of Civil Appeals. The Supreme Court has now dismissed an application for writ of error. The enterprising plaintiff's lawyer took a blackboard before the jury. On the damage question, he not only put down so much lost earnings to date and so much lost earnings in the future and had a breakdown as to how much disability there would be if there was an operation and how much if there was not; but, not satisfied with that, he went a step further. He wrote out on the blackboard in substance how the jury should find on all issues submitted, including those dealing with negligence, contributory negligence, etc.

The Court of Civil Appeals held that this method he had used was not to be permitted. Other courts will no doubt develop the subject further.

I BELIEVE the task of defense counsel in handling demonstrative evidence is three-fold. First, it is to combat the illegitimate, improper use by opposing counsel of demonstrative evidence. The second task is to devise means of effectively meeting both the borderline cases and the cases where demonstrative evidence is properly used (in other words, cases where the courts permit demonstrative evidence by the plaintiff.) And the third, and this is, I believe, even more important, to enter boldly—carefully, perhaps, so far as the method of proceeding is concerned—but boldly, so

far as the method of conception is concerned, into the field of demonstrative evidence with imagination and ingenuity and to use it whenever it can be properly and legitimately used. It is a weapon that is two-edged. It cuts as well for the defendant as it does for the plaintiff.

In these three fields I believe lies the future task of defense counsel in the use of demonstrative evidence. It is here to stay, and we might as well meet it.

North Texas Incident

Now we have still a few old-fashioned judges who counter-balance the ultra-liberals. We have a few—shall we say, reactionary—judges who permit practically no demonstrative evidence. I do not believe, however, we have anybody left who goes as far as one of our eminent North Texas Federal judges did in a city in his district.

There was a very prominent plaintiff's lawyer who was given to the use of demonstrative evidence and this very elderly judge, very straightlaced and somewhat of a martinet in his court room. This plaintiff's lawyer was worried about what this judge would say about a model spine he wanted to bring in, so he folded the model spine and kept it in his briefcase. After he had qualified his doctor, he brought out the briefcase and started to take out the model spine. He got halfway up to the witness chair.

The judge said, "Counsel, Counsel, what is that?"

He replied, "Your Honor, it is a spine."

"A spine?"

The judge (pointing at plaintiff): "It is his spine?"

To which counsel very promptly answered, "No, Your Honor, it is a model spine."

Thundered the judge, waving his hands, "Take it away, take it away," and gentlemen, it was taken away rather promptly. We are not going to have many judges like that left; so we will continue to meet with demonstrative evidence.

NOW in meeting what they have to deal with I think defense counsel might with profit inspect first of all the favorite devices used by plaintiffs' counsel in using demonstrative evidence. I think you can break them down into three categories. First, there are fancy models, plats and photos bearing on the questions of liability. Second, a favorite device is that which we have already been talking about, the blackboard, used primarily to break down damages and to make the damages finite, as I believe Mr. Belli has put it. Then, of course, there are the things that are relatively new, the use of gruesome-looking medical charts and drawings and photographs. Now, from the standpoint of the defense let's see what these things are and what can be done to meet them.

First are the fancy models, plats and photos bearing on liability, and they can be fancy! Photos, models and plats have a very important part to play in the trial of lawsuits. They are good evidence; they are relevant evidence. The defense cannot keep them out; therefore, it must meet them.

Behind the defense of nearly every personal injury suit is an insurance company, a railroad company or a transportation company of some sort. Expense of proper preparation of a lawsuit for trial

for the defense ought therefore not to be too great an impediment. This is particularly true in the preparation of demonstrative evidence for the defense. Let those of us who represent defendants therefore determine that our plats and diagrams will be just as carefully conceived and executed and with just as much imagination as the efforts of the plaintiffs, and let's not be too afraid of the expense necessarily involved.

Most defense attorneys are on very good and close terms with their clients. The clients listen to them. We ought not to be afraid, in those cases where it is indicated, to urge the client to spend whatever amount of money is reasonably necessary in order to secure and prepare for presentation effective demonstrative evidence. We have very able plaintiffs' attorneys in my home city of Houston, who in preparing an average personal injury suit of consequence or an average death case do not hesitate to spend \$3,500 to \$5,000 on the preparation of charts and plats and working drawings, if a process is involved, and on the technical advice and help necessary to prepare them. Well, I am not advocating you spend \$3,500 on technical assistance in the preparation of every lawsuit, but let's not be penny-wise and pound-foolish.

We get, then, to the method of combatting these blackboard breakdowns of damage items. It is admittedly difficult. It is primarily for the trial lawyer to work out in his own way and it depends largely upon his ingenuity and the feeling he has in that particular case. You Louisiana lawyers in your state court cases without juries need not be concerned, but a real problem is present in jury cases. I have one opponent who

tries a number of cases against me. His favorite device is upon starting his opening argument to take the blackboard and write all of the items of damages developed by his proof, and multiply them out. His multiplicand is low, but his multiplier is big because his plaintiff has got a lot of days ahead of him.

Use Common Sense

Well, there are some ways of meeting that. The most effective way I have found might not work for the other fellow. I start by anticipating what is going to happen. I bear down with the jury, asking everyone of them where individual interrogation is permitted, "Will you not only follow the law and the evidence, but use your own common sense, and, using common sense, render a verdict in this case that comports with your common sense and seems to be fair to every party to this lawsuit?"

You may say, "that is trite; that goes on all the time." Well, maybe it does or maybe it doesn't, but it has a purpose. When that opening argument is completed and the figures are all on the blackboard, you have a starting point from which to argue.

You can argue thus to the jury:

"Now you gentlemen have seen the figures which plaintiff's counsel has put on the board. You have seen him doing a lot of multiplying and adding of those figures and it makes a pretty mathematical problem, but, when you were accepted, you told us you would do what your common sense dictated and you would do what was fair and reasonable and return a verdict fair to both sides. That is what we are asking you to do.

"If all this case was with respect to calculating damages was simply a matter

of putting down figures and multiplying them and calculating the total, we would not need a jury to answer this question. The judge could do it, or he could get a bright high-school student to make these calculations. But that is not the question. The court wants to know what everybody on this jury considers is a fair and reasonable verdict."

I am not going to amplify that. It would be amplified in oral argument before a jury. It is illustrative of what can be done.

Third, of course, is the matter of combating medical charts, medical drawings and medical photographs. To me this is the most troublesome. Plaintiff's counsel brings them in on the theory that they add to the jury's understanding. I have always had a great deal of doubt that even the old, standard x-ray plate helped the jury any. I cannot read an x-ray plate satisfactorily after working at it for a good many years, and I do not believe the average layman who doesn't see but one or two x-ray plates in his life is helped in the least. It is, however, more or less standard practice now. But, when the plaintiff starts bringing in the "bleeding hearts," all of these medical drawings and charts showing the human body and the parts of it which nobody ever sees except the surgeon, the defense really has something on its hands. That they do have some prejudicial and sympathy-inciting effect cannot be denied.

Now, about the only thing you can do is urge at the pre-trial and again during the trial the sound argument that such devices are not necessary for an understanding of the case and that they depict nothing the layman ever sees, that even after the doctor explains one of them

nothing has been added to the enlightenment of the jury and it is prejudicial and it is a part that is hidden from view and something that only a surgeon sees and therefore it is no help. The courts are still working out—and must for a long time to come—the proper limitations of this type of evidence. Proper attention to the problem and good advocacy from both sides of the table will have a profound influence upon the course the law will take upon demonstrative evidence consisting of medical photographs, drawings and charts.

I am afraid one of these days some enterprising plaintiff's lawyer is going to come in years after a surgical operation is held and attempt to show a colored motion picture of that surgical operation in progress. Of course, the objections to it are obvious. Those things are done under an anaesthetic and cannot contribute anything to the understanding of the pain and suffering.

NOW when we come to our third point, the affirmative use of demonstrative evidence by the defense, we open up a whole new field, most interesting and attractive to the trial lawyer who wants to use his imagination and ingenuity. Defensive use of demonstrative evidence has no limits except: Is it proper, in good taste, and of probative value? Of course it must not be overdone. Let us adopt the golden mean of being imaginative yet restrained.

I know of some eminent defense counsel who believe there should be no demonstrative evidence from the defense. I do not agree with them. I think we must ask, "Is it relevant, persuasive? Does it do a good job?" If so, we must use it. Now it can backfire. I am going

to tell you of one case where demonstrative evidence backfired from the plaintiff's standpoint.

We have in the Piney Woods of East Texas a rather noted lawyer who practices only in small towns and usually has a friendly jury and a friendly judge. He gets away with some things that make you wonder how he does it. I will call him Mr. Blank.

This gentleman became very adept in the use of model automobiles, which is perhaps a good device—I have not had much luck with them. He had a young colored girl 15 or 16 years old on the stand who had been a witness to an accident which occurred in a colored community. Most of the witnesses were colored people. This girl had testified with these model automobiles very effectively. Defense counsel had learned Mr. Blank had had a gathering of his witnesses the Saturday before trial.

The defendant's counsel got her on cross-examination. He said, "Did you ever see these little automobiles before?"

"Yes, sir."

"When did you see them?"

"I saw them Saturday."

"Where did you see them?"

Very reluctantly, "I saw them down at the colored school."

"Who was down there?"

"Mr. Blank and that girl over there and that boy over there."

He said, "You were all down there and you had these little model autos, and I guess you all sat down with the little model autos and showed Mr. Blank just exactly how that thing happened, did you?"

"No, sir, he showed us."

Now I have stated that ingenuity is about the only limit on the use of dem-

onstrative evidence for defense once you get past the other tests of propriety, good taste and relevance and so forth. I think I will give you some illustrations on the use of ingenuity in the employment of demonstrative evidence by the defense. Perhaps these illustrations will stimulate your own thinking.

I think you might locate and read a case decided by the Minnesota Supreme Court back in 1930. Baird vs. Chicago Etc. R. R. Co., 228 N. W. 552. That was a case where there was a railroad switchman who had gotten a mutilated hand and claimed because of his injury he was no longer able to do switchman's work. The railroad was defending on the ground that they were willing to keep him on the payroll and give him a job which he could do. The railroad's attorney produced four switchmen and had them exhibit mutilated hands, each one of them a right hand, and each of them in a worse state of mutilation than the plaintiff's, and each of them had been a switchman on the railroad for many, many years. That was the best bit of demonstrative evidence I think I ever heard about.

There was another case, a compensation case, where the plaintiff was a laboratory worker and claimed he had gotten poisoned from metallic mercury rolling off a laboratory shelf on one occasion and getting into the drinking water. A little research showed that metallic mercury is going to sink to the bottom of the drinking water and it is not going to break up. So the two lawyers from our office who were trying the case got an old-fashioned water bucket which they brought into the courtroom and filled with water and then they dumped some metallic mer-

cury into this bucket in full view of the jury. Then all during the trial they would walk over and slake their thirst by drinking from this bucket. It was most impressive.

These illustrations are merely illustrative. They could be multiplied indefinitely but I must give way to the limitations of time. Just a few words more in conclusion.

Other Techniques

A lot of work is being done in demonstrative evidence. I suppose you know we can use motion pictures in color and get better pictures. The telephoto lens has been of great benefit in photography. Some insurance claim departments have worked out devices for making an activity check by means of a truck with one-way glass in it and a motion picture camera. We are in a new field. We cannot be like the ostrich and stick our heads in the sand. We are dealing with something we are going to keep on meeting and something we must learn to work with.

Demonstrative evidence does not belong to the plaintiffs alone. It is a weapon equally useful to the defense. If an idea can be gotten to the jury or a court, for that matter, better by demonstrative evidence and if that demonstrative evidence comports with counsel's sense of propriety and fair dealing, and if it is both relevant and trustworthy then we should make the most of it.

The law will continue to grow. As I stated in the beginning, the practicing lawyer at the bar and the client who stands behind him are going to have a great effect upon the future of demonstrative evidence in this country. Let us be leaders, not followers.

Economic Survey Committee Reports On Development of Questionnaire

by Richard B. Montgomery

"THE brutal fact is that the lawyers of the United States have been as indifferent to their own interest as they have been jealous of and faithful to the interest of their clients."

This quotation is from the report of the "Survey of the Legal Profession" by the American Bar Foundation. For some reason this quotation startled the legal profession. It is responsible for the present interest in the economic condition of the lawyers. It has particularly focused their attention upon available remedies.

Again on the subject, the committee for the economic survey in Mississippi gave these reasons for their survey:

1. Lawyers through the United States have the same problems encountered in Mississippi, or any other state.
2. *There is a growing realization that the great economic, social and political changes and perplexities of this era cannot be met adequately by the extreme individualism of the past.*
3. There is a growing appreciation of the need for and value of cooperative effort.
4. There is a national trend towards

Mr. Montgomery is chairman of the committee charged with making the economic survey in Louisiana. This preliminary report was made to the Local Bar Association meeting in Alexandria.

employing modern methods of research and analysis to achieve understanding of, and to seek solutions to, the problems of the bar.

Low Income Problem

The problem of the bar in this instance is that both the median and mean income of lawyers have fallen far below that of doctors and dentists and is far from commensurate with the ability of the legal profession. Authority for such statements may be found in the Survey of Current Business by the United States Department of Commerce, the American Bar Association survey of the legal profession, the Ohio, Colorado, Texas, Mississippi and Nebraska Bar Associations' surveys. If anyone is interested in the statistics they should obtain the American Bar Foundation's "Distribution and Income of Lawyers in the United States, Part I." This is a most comprehensive report.

At its very first meeting your committee recognized that another statistical study would not be of much aid to the Louisiana Bar. It would be useful, of course, because it would show the income of the Louisiana lawyer and would ascertain if lawyers of Louisiana had the same problems as those of the nation at large.

In preparing its questionnaire the committee felt that two things should be kept in mind, (1) the questionnaire should be of such a nature that the

lawyer answering it would have to make a study of his own business, and (2) facts would be elicited which could be used to help improve relations between the individual members of the bar and the public. It is believed these facts also would be helpful to the bar association in planning future activities.

Advisers Named

The committee voted to employ Dean William D. Ross, of the L.S.U. School of Economics, and Professor Charles O. Vandervoort, of the Marketing Department of the Division of Commerce, who was employed by the Mississippi committee. Also, Don Seiwel, of Bauerlein, Inc., was to act as public relations counsel to the committee.

After several meetings, the committee, with the help of these advisers, prepared the questionnaire which was distributed at the meeting in Alexandria for criticism. The committee recognizes that the questionnaire is long, but upon the advice of both Dean Ross and Professor Vandervoort it was prepared in such a manner that any lawyer answering it will have thorough knowledge of his costs, overhead, method and operation of his office. He will have to study how he conducts his business as a lawyer in order to answer this questionnaire. It is the impression of the committee that most lawyers have been so indifferent to their own interests that their fees are not based upon scientific knowledge of the cost of doing business but are more or less haphazardly fixed. It will be useless to carry on a survey merely to write a beautiful report on the economic condition of the Louisiana lawyer. Unless the lawyer can be made to realize that this

effort will contribute to his pecuniary advantage, and then only if he honestly attempts to answer the questions, is this survey going to accomplish any beneficial results for those at whom the survey is aimed.

Cooperation Sought

It is the intention of the committee to send copies of the questionnaire to all local bar associations and request them to have discussions about it and the reasons for it. As a matter of fact, as pointed out by the advisers to the committee, the only thing that the lawyer sells is his time. In order to increase his income he must do one of three things:—(1) work longer hours, (2) increase his fees or (3) reduce his cost of doing business as a lawyer. Most lawyers are working very long hours if the surveys of other states are correct. Therefore, they must increase their income by No. 2 or No. 3.

In order to increase fees the committee has found that there is nothing so beneficial as an exact knowledge of the cost of doing business and what fee should be charged in order for the lawyer to obtain a fair return for his work. When the facts and figures are presented to clients, the committee found, in most instances, very little criticism of the increase in fees.

The third method, and probably the one which would help the lawyer the most, is a determined effort to cut the cost of doing business. In this connection the committee has contacted Remington Rand, Burroughs Corporation and International Business Machines and has asked them to make a survey of the methods lawyers use in doing business so as to be able to advise them as to how

more efficiency and less overhead can be obtained by lawyers in their own offices.

Bookkeeping Aids

The Burroughs Corporation has taken a great deal of interest in the matter, and the committee is expecting a report from them soon. The committee of the American bar has taken up the question with I.B.M. to attempt to have their service companies prepare charge tickets and other data so that they could do all the bookkeeping and billing for lawyers at a cost of about \$35.00 per month for an individual lawyer. The committee is investigating this and finds that the Remington Rand Service Company is rendering extensive accounting services to various businesses. This would certainly be a solution to a most difficult problem. It is the intention of the committee to pursue this feature of its report because of the possibilities for greater efficiency of office operation and lower costs involved in its use.

Secrecy Assured

One of the questions which is bound to be asked is the question of secrecy. The following has definitely been decided by your committee:

(1) The questionnaire should be sent to every lawyer in the state, since this is not an attempt to merely obtain statistical data. If it were solely for the purpose of obtaining statistics, a sampling would be sufficient. However, if it is in the manner of education, then every lawyer should receive a questionnaire and be urged to answer it.

(2) The answers to the questionnaire are not to be signed.

(3) They are to be placed in an envelope addressed to Bauerlein, Inc., the

public relations counsel, at their New Orleans office.

(4) Bauerlein, Inc., is to set up a procedure whereby some clerk who has no knowledge of this survey would open the envelopes and sort the questionnaires. The envelopes with the Post Office addresses would be immediately destroyed.

(5) All questionnaires would be destroyed as soon as all necessary information had been tabulated by Bauerlein.

(6) No member of the bar would ever see the answers to the questionnaire nor the envelopes in which they were mailed.

These procedures can be followed, because, to a large extent, it is immaterial as to who has answered a questionnaire. It is not similar to voting by mail. Furthermore, it is extremely doubtful that any lawyer would send in duplicate answers. And finally, the questionnaire is of such a nature that one member of the firm may be designated to answer parts of it for the other members of the firm and this will be so noted. However, the committee is of the opinion that it would be to the best interest of all if each lawyer had to at least participate in answering questions as to the operation of his office whether it is a partnership or not.

Finally, the committee is of the opinion that it is absolutely necessary that the local bar associations assist in this program. It is a program of education, not a collection of figures.

The committee stands willing to discuss the questionnaire and the survey at any time. The committee is so selected that there are members in practically every locality in the state who are able and willing to do this at the invitation of the local bar association. Please let us help you,

Summation of General Principles Applicable to Maritime Injuries

by John W. Sims

ALTHOUGH one may tend to think of tidelands employees in the limited sense of those of oil or drilling companies, an analysis of operations in the tidelands will make it obvious that there are many other types of companies whose employees should be considered. A few are well-servicing companies, geophysical operators, towing companies, crewboat operators, caterers and labor contractors.

Any one company may employ men who are generally thought to be either seamen, oil workers, skilled specialists, or roustabouts and laborers, or it may have employees of many different classifications. Depending on the nature of the particular job, the employee may do most of his work ashore or afloat, or on those hybrid creations known as the fixed platform and submersible drilling barge.

Complicated Situations

It is, therefore, impossible in analyzing the employer-employee relationship, the rights of the employees to compensation or damages, or the duties of the employer, to accept or utilize one system of law, or one body of rules, as the overall or controlling law. The employee may be afforded different rights, and the employer may have correspondingly different duties, depending primarily upon the fundamental nature of the employee's activities and in some cases upon the locale of the injury.

This discussion would fall far short

of being helpful if it ignored reality and was limited to a pure master and servant theme. While the personnel employed by the oil companies proper are numerous indeed, they form only a part of the labor force constantly at work. The drilling contractor, the vessel operator, and the labor contractor, under independent contract to the oil company, have each his own corps of employees. Inevitably, you will be concerned not only with the direct claim by the injured employee against his employer, but also with the claim of that same employee, perhaps, against one or more companies or individuals alleged to have been solely or jointly at fault. When such claims are urged they lead to questions of contribution or indemnification, and in many cases to the involvement of various insurers under our direct action statute. With many parties participating in a single operation, it is not unusual to encounter fantastically complicated legal and factual situations.

It is quite obvious that many of you are well acquainted with the problems but undoubtedly a number of you will be considering them for the first time. It would not be advisable to begin with an exposition of specific problems of the

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most involved sort. Some background or foundation is necessary.

Ancient Concepts

As in any other field, counsel must consider not only specific statutes but also an abundance of principles generated by years of case law. In the maritime field many concepts are quite ancient and the reason for their origin lost. However old they may be, and however unlike some of the principles of Common Law, they have nonetheless survived with modifications to the present day—strong evidence of their practicality and usefulness.

There are four statutes of major importance to tidelands operators, three of them bearing directly upon the employer-employee relationship and the fourth creating a right of action for wrongful death on the high seas. They are the Louisiana Workmen's Compensation Act, the Federal Longshoremen's and Harborworkers' Act, the Jones Act, and the Death on the High Seas Act.

It might seem somewhat more systematic if we began by discussing all of the various rights or laws pertaining to each major category of worker, such as the seamen, the harborworker, and so forth, but unless you have some idea of the content of the major statutes I believe the discussion would lose much of its value. Perhaps the difficulty will be minimized if, while discussing the statutes, you remain aware of the general tort law of Louisiana and the general maritime law; that the really valuable right may be against a non-employer, and that there may exist important alternative or elective rights. Then, when we discuss these, the statutes themselves will be seen in their proper

perspective.

Any extended dissertation of the Louisiana Workmen's Compensation Act¹ should be unnecessary. The Act is most important in the tidelands picture for I believe it to be the one most frequently used. The workers actually on navigable waters, inshore or offshore, are like an army in the field or a fleet at sea—for every man actually offshore, there must be many on land furnishing and processing supplies and materials, or participating in some phase of their transportation.

Thus, that vast number of employees, who, while forming vital links in tidelands operations, never have occasion to leave the shore, are governed by the Act and their employers must be prepared to compensate them thereunder in the event of injury or death.

While it is frequently said that jurisdiction under the State Act ends at the shoreline and cannot be extended to workers who are injured while on navigable waters, this is not an entirely correct statement.

Twilight Zone

One important exception to the general jurisdictional rule: the Supreme Court of the United States, in the case of *Davis v. Department of Labor of Washington*,² recognized the existence of a "twilight zone" and permitted the worker injured afloat to claim under a State Act when application to the Federal Longshoremen's and Harborworkers' Act was not required by the doctrine of uniformity. What had happened earlier is that the Supreme Court had decided that an essential feature of the maritime law was the uniform application of its principles to maritime work-

ers, which is another way of saying that the States would not be permitted, by compensation legislation or otherwise, to impose their various compensation systems upon maritime workers and thus create forty-eight different systems of law applicable to such workers. The *Davis*, and latter cases, permit the State Act to operate where the injury occurs on navigable waters if the nature of the employment is of such local character that use of the Act will not adversely affect the general admiralty jurisdiction.^{2a}

While the "twilight zone" doctrine has in the past been virtually limited to persons who may be considered basically shore workers, an important new development and another exception will be dealt with, when we discuss the rights of seamen.

The Federal Longshoremen's and Harborworkers' Compensation Act,³ as amended, is the federal counterpart of the State Act. It applies only to injuries occurring on navigable waters and is limited to cases where recovery through state workmen's compensation laws may not be validly provided for constitutional reasons—the requirement of uniformity. Thus, the act picks up at the edge of navigable water to take care of the maritime worker who cannot come within the purview of the state act either directly or by urging the "twilight zone" doctrine. Excluded from its protection are the master or members of the crew of any vessel, or any person engaged by the master to load, unload, or repair any small vessel under 18 tons net. Also excluded are employees of state or federal governments.

Like a true compensation act, the benefits are available irrespective of fault

on the part of the claimant, although the claimant cannot recover if the injury results solely from his intoxication or his wilful intent to kill or injure himself or another person.

Spells Out Benefits

The act exhaustively spells out the benefits it affords and time limitations will not permit us to deal with them in detail. We can say that disability payments on a maximum basis are remarkably similar to those provided under our state act except in the case of total, permanent disability or death. In the latter two instances, while there is a weekly limit, there is no ultimate maximum, for the total payment to be made depends upon the life expectancy of the injured man, or, if the case involves death, the life expectancy of the widow and the term of minority of any children.

When one compares the maximum allowable under our state act, in cases of total, permanent disability or death of \$14,000.00, it is easy to see why those insurers who write coverage under the Harborworkers' Act are so concerned with safety in operations. A young widow with two or three children may require a reserve in a high five figure range, for payments continue until her death or remarriage, and until each of the children reaches the age of eighteen.

Elaborate provisions in the act provide for securing payment of compensation, either by adequate insurance or by qualification as a self-insurer. Failure to secure payments of compensation makes the employer subject to criminal penalties. A contractor must secure compensation payments for employees of a sub-contractor unless the sub-contractor has done so.

The scheme of administration is quite different from the state act. It involves a number of compensation districts, each covering an area of the country, and each administered by a Deputy Commissioner who has the power to investigate cases, conduct hearings, and make or modify awards. The act provides, in the case of injury or death, that notice of injury or death be filed by the claimant with the Commissioner and any claim be made within one year. Failure to make a claim within one year is not an absolute bar, and in practice the employer or its insurer is quite frequently the party who gives the first notice.

Lump sum settlements are possible under a specific provision of the act, but they are rather unusual as the Deputy Commissioner will not approve one unless he has good reason to believe that it is required in the interest of justice.

Third Party Suits

The act also takes cognizance of the possibility that the injured employee may have a claim against a third party for causing the injury and permits the employee to file notice of his election to sue such a third party. While the suit is pending, no compensation is paid but, should the suit be unsuccessful, the employee may then apply for the compensation as though the third party suit had not been prosecuted.

On the other hand, should the injured employee elect to accept compensation under an award, the employer, or his insurer, is then subrogated to the rights of the injured employee and has full control over any subrogatory action. If there is a recovery over and above the amount paid or payable for compensation, the injured employee is entitled to

receive the excess. Recently, the Supreme Court decided,⁴ in a case where the compensation insurer of the employer was also the liability insurer of the third party tortfeasor, that the injured employee did have the right to sue the tortfeasor even though he had previously elected to accept compensation. To the casualty insurer this simply means that because his company may be on both sides of the case he cannot exercise such absolute control, via subrogation, over the rights of the injured employee, as to restrict his recovery to compensation.

As heretofore indicated, the exclusive remedy of a maritime employee against his employer is the compensation provided by the act, unless, of course, there has been a failure to secure the payments, in which case a suit at law may be maintained. Also, theoretically, the maximum exposure of the employer is provided for in the act. However, the Supreme Court, in another important case⁵ which I predict you will come to know intimately, held that a steamship owner, successfully sued for damages by a longshoreman, could claim indemnification from the employer because of its active negligence and thus recoup the money paid the employee. The same concept will surely be employed in the tidelands. Why should it not apply if the employee of a sub-contractor sues a drilling company whose only fault was passive, and active fault on the part of the sub-contractor is shown? When we reach the doctrine of indemnity for unseaworthiness, the importance of the decision will become even more apparent, but those of you who may be in the position of either employer or insurer will appreciate, even at this stage,

the additional exposure involved.

The Outer Continental Shelf Lands Act,⁶ provides with respect to disability or death of any employee occurring as a result of operations on the Outer Continental Shelf in connection with exploring for, developing, removing, or transporting by pipeline the natural resources of the subsoil and seabed that compensation shall be payable under the provision of the Harborworkers' Act. Seamen remained excluded, as do government employees, but artificial islands and fixed structures are comprehended by the act. Regulations to implement the act have been promulgated.⁷ Of course, the Outer Continental Shelf limits are really defined by the Submerged Lands Act.⁸ There are many problems inherent in correctly determining the application of the state and federal acts in borderline cases.

Seamen Protected

The Jones Act⁹ was enacted by Congress in 1920 to afford a seaman the same right to recover damages from his employer as that enjoyed by railroad workers. It supplemented rather than changed the maritime law, for the seaman retained without change his cause of action for wages, maintenance, and cure and also the right to claim indemnity for unseaworthiness. Now for the first time the seaman became possessed of an action for damages in an unlimited amount for injury or death resulting from negligence of a fellow crewmember, ship's officer, or the vesselowner. The history of the act rather clearly shows that it was preferred to a compensation statute.

The act has been said to be exclusive as to seamen, in the sense that the States

cannot impose their various compensation acts or other laws upon seamen or their employer. The definition of "seaman" is broad indeed and encompasses virtually anyone who serves aboard a vessel in navigation, and is more or less permanently connected with the vessel. Size of the vessel is immaterial as is number of the crew. The seaman need not be on articles. Hence, the act applies to the officers and crew of an ocean liner on an extended voyage, and also to the lone operator of a crewboat who may have been employed for one run.

Since there must be an employer-employee relationship, the owner of a bareboat chartered vessel is not ordinarily personally responsible under the act for injuries sustained by the employees of the bareboat charterer. Determination of the existence of an employer-employee relationship and the precise nature of the employment (that is, whether the employee is or is not a seaman within the meaning of the Act), are generally questions of fact, or to put it another way, jury questions. You may be faced with a problem of this sort—suppose an employee of a catering firm is assigned by his employer to work aboard an offshore supply vessel for an indefinite period as cook, pursuant to a catering contract between the employer and the vessel operator. Thereafter, the employee sustains injuries as a result of the negligence of a crewmember employed by the vessel operator or due to the negligence of another employee of the catering company. Under the Act, cooks can certainly be seamen, but can the catering firm, as the injured man's direct employer, be held under the Jones Act? Can the vessel operator, with no direct

connection with the plaintiff be held the employer?

Then complicate the situation a bit by placing the locale of the employment aboard a submerged drilling barge which has not moved off location for a year or more, or have the injury take place while the cook is being conveyed to an offshore location of a fixed type in a crewboat operated by his employer and the second jury question becomes of importance.

Acts Exclusive

Since the enactment of the Harborworkers' Act, stevedores, longshoremen, repair workers, and the like do not enjoy Jones Act rights. Theoretically, at least, the categories and the acts are mutually exclusive. Practically, however, there have been and will continue to be many different borderline cases. Where there is a possibility of securing a large award under the Jones Act, one must expect the plaintiff to make every effort to bring his case within the terms of the Act in preference to accepting periodic payments of compensation under the Harborworkers' Act.

The two most interesting cases of this sort arising in our area in recent years have been *Gianfala v. Texaco Co.*,¹⁰ and *Texas Company v. Savoie*.¹¹

Two other cases with which you should be familiar are *Senko v. LaCrosse Dredging Corp.*,¹² which arose in the Fourth District Appellate Court of the State of Illinois, and *Grimes v. Raymond Concrete Pile Company*.¹³

Since liability under the Act is based upon fault, those of you who are concerned with the investigation and adjustment of claims on behalf of either the employer or employee, will find it

necessary to conduct substantially more complete investigations than you may feel is necessary in compensation cases. Every factual aspect, however inconsequential at the moment in appearance, will have to be carefully considered—every possible witness interviewed at length—and every possible ground of fault examined. There is no substitute for a detailed and prompt inquiry, for when suit may be filed as much as three years after the injury, one must expect the memory of the witnesses to be hazy—if they can be found at all.

Suits under the Jones Act may be filed either in the State Court (where they are not subject to removal), In Admiralty, or at law in the Federal Court. No diversity is required and except in admiralty, a jury trial is available. The Act does not confer *in rem* jurisdiction, or rights against the vessel itself, although it is possible to obtain a bond to secure the claim by writ of foreign attachment in an admiralty proceeding if the respondent is a non-resident. The jurisdictional requirements of the Act are treated as matters of venue which may be waived; the jurisprudence dealing with this portion of the Act is a topic for study in and of itself.

You should know:

1. That contributory negligence is not a bar to recovery but only operates to reduce recovery.
2. The defenses of the fellow servant rule and assumption of the risk are not available.
3. By decisions of the Supreme Court, the Act applies to injuries occurring on shore as long as they were sustained in the service of the ship. There are some rather amusing decisions in the books which will lead

the reader to believe that service of the ship is rather all-embracing, but for our purposes it suffices to say that simply because a man is on shore leave he is not deprived of the act's protection.

4. Assault cases are a fruitful source of claims, whether the assault takes place aboard the vessel or ashore.
5. A Jones Act claim may be the proper subject for limitation of liability, which is particularly important in the event of multiple claims. This right is somewhat restricted where only one claim is involved, and of course may not be as helpful to the insuring interests as it was prior to the JANE SMITH decision.
6. Claims involving death may be asserted only by the personal representative of the estate who claims for the benefit of beneficiaries specifically designated by the Act, and not for the estate. While it is a common practice for settlements to be made only after an approving order has been secured from the Probate Court by the representative, there is nothing in the Jones Act authorizing this procedure.
7. In keeping with the tradition that seamen are wards of the Admiralty, the Courts have uniformly scrutinized releases with great care when efforts are made to set them aside. No attorney can assure the employer that a release taken from an unrepresented seaman will be upheld. Settlement of a serious claim for a nominal sum will almost certainly be set aside.

Beadle Case

Before leaving the Jones Act, I must refer to a case recently decided by the Court of Appeal of Louisiana, First Circuit, which resurrected a 1949 decision of the Court of Appeal for the Fifth Circuit. The case is *Beadle v. Massachusetts Bonding & Insurance Co.*¹⁴ Beadle, who had been employed for several years prior to his death as sole member of the crew of a towboat, was drowned while operating his personally owned outboard motorboat on the Atchafalaya River. At the time of his death, he was on an errand for his employer seeking a replacement to operate the towboat while he took a vacation. The Court found that Beadle was unquestionably a seaman. It was perfectly obvious under the facts of the case that no negligence on the part of the employer could be proved which would afford recovery under the Jones Act.

Counsel for Beadle's widow, therefore, sued under the Louisiana Workmen's Compensation Act which does specifically cover operation and maintenance of vessels, boats, and other watercraft. The defendant insurer argued, and correctly, I believe, that the state compensation act could not apply; that the Jones Act was the exclusive remedy and application of the state act would prejudice the uniformity of the maritime law. Certain decisions of the United States Supreme Court strongly supporting this contention were not adverted to in the Court's opinion, which seized upon the "twilight zone" theory of *Davis v. Department of Labor*, discussed earlier, and concluded that since there were overlapping remedies, the state act could apply.

While justifying its adoption, or application, of the "twilight zone" doctrine to seamen, rather than to longshoremen, the Court stated that the jurisprudence hinged not upon distinctions between various types of maritime employees, but upon the maritime employees' choice of the State remedy as against the overlapping federal remedy.

This is where the earlier case, decided by the Fifth Circuit, came into play for *Maryland Casualty Co. v. Touns*,¹⁵ was cited in support. Unquestionably, the *Touns* case is authority in this Circuit, but until its citation in the *Beadle* case, it had never been previously cited or even followed in principle. It is hard to see how the *Beadle* and *Touns* decisions can be reconciled with the United States Supreme Court decisions, but resolution of this conflict will have to await a new case for the *Beadle* case was settled without resort to either the Louisiana Supreme Court or the United States Supreme Court.

Perhaps the new case is *Richard v. Lake Charles Stevedores*,¹⁶ which was also decided by the Court of Appeal for the First Circuit of our State. Relying on the *Beadle* decision, and other authority, the Court of Appeal reversed the lower Court and held that the plaintiff longshoreman, injured while on board a vessel on navigable waters, could recover under the Louisiana Compensation Act on the basis of concurrent jurisdiction between State and Federal remedies. My information is to the effect that the employer will make every effort to obtain a writ from the Supreme Court of the United States. If the United States Supreme Court takes up the problem of the *Richard* case, it may very well indicate by its ruling what its

position would be should a case come before its similar to the *Beadle* case.

Death on High Seas Act

The Death on the High Seas Act,¹⁷ was enacted but a few short weeks before the Jones Act and, for the first time, allowed recovery, in Admiralty, for death occurring on the high seas beyond a marine league from the shore. Although the Statute, by its own terms, states that the suit is maintainable in Admiralty, and I believe the prevailing view is that this is mandatory, some suits have been entertained on the civil side of the Federal Court and in the State Court.

Unlike the Jones Act, it confers rights *in rem* against the vessel; unlike the Jones Act, there need be no employer-employee relationship. Like the Jones Act, the right of action is given to the personal representative of the estate for the benefit of certain designated beneficiaries. Contributory negligence is not a complete bar. The Act may be employed by survivors of a seaman against his employer, and in that sense, the Jones Act is not exclusive.

Of increasing importance are aerial operations, whether involving the conventional airplane or the helicopter. In the case of employees, the compensation acts, state or federal, will be applied as the facts of the case indicate. Thus, if the owner of the helicopter is the employer of the injured person, the case should be one of compensation. However, if the owner of the helicopter is transporting the injured person under contract with the employer, a wrongful death action should certainly lie against the owner regardless of compensation rights which may exist. If the crash

occurs ashore or within a marine league of the shore, such a suit will be based on our state law, but if it occurs beyond a marine league, the only right of action in existence is that afforded by the Death on the High Seas Act.

If the casualty occurs while the aircraft is waterborne, it is not unlikely that an effort may be made to obtain relief under the Jones Act on the theory that the injured person is a seaman. Such a contention would be a logical contention of what I believe to be illogical and invalid arguments which are being urged on behalf of workers who, of necessity transported to the scene of operations by boat, are said to be seamen.

Perhaps the most important point for you to remember is that in any casualty involving wrongful death more than a marine league from shore, the representative of the decedent seaman, passenger, or worker will found his claim against a third party tortfeasor upon this Act. The collision case is the typical, easy-to-understand instance. If your crewmember is killed in collision with another vessel, suit will be brought under the Jones Act against you, and under the Death on the High Seas Act against the other vessel or her owner. Depending on the status of the decedent, there are, of course, various combinations which must be anticipated.

Review of Statutes

A review of the four statutes shows that they provide:

- Compensation for shore employees;
- Compensation for maritime employees;
- Damages for seamen—as against his employer wherever injured or killed;
- Damages for death of a non-employee

occurring on the high seas.

But what are the provisions for:

1. Wrongful death of a non-employee on navigable waters within the territorial limits of a state;
2. Injuries of a non-employee on navigable waters, whether within or without the limits of a state;
3. Medical treatment for the injured seaman?

It is probably desirable to discuss the last question first, simply because the first two lead us into a field which does not confine itself to the rights of seamen.

Whatever you wish to denominate it—an incident to employment—a quasi contractual right—or an implied obligation—the seaman, unlike any other maritime worker, is entitled to what is known as wages, maintenance, and cure if he sustains injury or illness, in the service of the vessel, whether ashore or afloat. The right is non-statutory. Broadly speaking it means that the disabled seaman is entitled to his wages to the end of the voyage, to the end of the articles if on articles, or, if on a series of short irregular voyages of a local nature, to the end of the regular pay period.

Thereafter, he receives no further wages as such, but is entitled to medical treatment at the expense of the employer, although this obligation may be discharged by making available the facilities of the United States Public Health Service, familiarly known as the Marine Hospital. Finally, if an out patient, he is entitled to maintenance, which is a daily subsistence allowance of an amount necessary to provide for food and lodging he would have received if he had continued to work.

The right to wages, maintenance and

cure is in no way dependent upon fault and since it continues, except for wages, until complete or maximum recovery, it is analogous to many of the benefits of a compensation statute. In some respects it may be even broader because, particularly in the case of illness, there need be no causal relationship between the employment and the disability.

Much more could be said on the subject, for proper discharge of the employer's duty is unquestionably as important in this instance as it is under the compensation laws. The employer must and should take affirmative steps to see that the seaman is provided for, not only because he is bound to do so, but also because failure to do so exposes him to a separate action for damages.

Wrongful Death

Returning to wrongful death, it will be found in the case of a non-employee that, since absent a statute, no remedy existed for wrongful death in Admiralty, the Admiralty Courts have adopted and enforced the various state wrongful death statutes in cases occurring within the territorial waters of a state. In Louisiana Article 2315, related Code articles, and the jurisprudence constitute the applicable laws. It is important to note that contributory negligence—regarded as a substantive doctrine—is a complete bar to the action, as is not the situation in death actions under the Death on the High Seas Act. Should Congress enact a death statute encompassing inland waters as well as the high seas, it is believed that its provisions would then supercede the state law.

If the death with which you are concerned occurred in the vicinity of one marine league from shore, it will be

most important for you to fix the point with the utmost precision. Both substantive and procedural rights depend thereon. Assuming diversity and jurisdictional amount, the death action under the State Act can certainly be enforced at law in Federal Court before a jury, which may not be true of cases governed by the Death on the High Seas Act. Under the State law, there are no *in rem* rights such as are granted by the latter. Of course, regardless of location there is nothing to prevent suit in Admiralty *in personam* regardless of jurisdictional amount or diversity.

What of injuries sustained by a non-employee on navigable waters. We are not referring to death, nor to any rights which the worker may have for either damages or compensation as against his employer, but solely of his rights against a third party tortfeasor. Here there is a substantial, complicated, and interesting body of law. Basically, liability depends on fault, just like our State law, but, unlike the State law, and like both the Jones Act and the Death on the High Seas Act, the doctrine of comparative negligence applies.

At one time, it was the common practice to enforce such rights in Admiralty because if suit were brought at law, the common law defense of contributory negligence would be urged and because the libellant would also enjoy rights *in rem* if there were an offending vessel. These are particularly valuable rights in the case of transient vessels, for they afford an opportunity to exact a release bond. Now, however, in cases where diversity and the jurisdictional amount are both present, the more informed advocate usually proceeds at law in the Federal Court, giving his client an op-

portunity to place his case before a jury with extensive fact finding powers. This can be safely done because the old rule no longer exists. Now, regardless of the forum, maritime principles will be applied to a case of maritime tort. But we still have what some term an unjustifiable inconsistency—if a person merely suffers injury on any navigable waters comparative negligence applies, as it does in death cases on the high seas, but if that same person had suffered death on inland waters contributory negligence would be a complete bar.

To put it another way, if two persons are involved in the same casualty on inland waters, with one injured and the other killed, contributory negligence will only reduce the recovery of the injured man but will completely defeat that of the decedent's survivors.

A non-statutory right of increasing importance is the right to claim indemnity for unseaworthiness. Because it has now invaded the entire maritime field it is important to explain the basic principle.

Of Hazy Origin

Before the Jones Act, seamen possessed in addition to their right to wages, maintenance, and cure, a right to claim indemnity for injuries sustained as a result of the unseaworthy condition of the vessel or its appurtenances. It did not, and still does not, extend to death cases and, not being dependent on fault or neglect, is a species of liability without fault or insurer's liability.

The origin of the right is hazy, but the jurisprudence voluminous. The landmark case of *Seas Shipping Co. v. Sieracki*,¹⁸ for the first time extended the doctrine to a longshoreman injured

aboard the vessel. Since then, it has been further extended and now includes almost any person lawfully on board a vessel in the course of some type of business or duty pertaining to the ship. Exclusively a maritime right, it is nonetheless enforceable at law before a jury. Since many injuries occur under circumstances where negligence cannot be proved, it offers the only, or an attractive alternative, avenue of relief to many plaintiffs.

A recent case, however, *Kermerac v. Compagnie Generale Transatlantique*,¹⁹ has limited the doctrine to prevent recovery by a visitor of a seaman who was given a pass to board the vessel. The Court felt that the warranty should not extend so far as to protect a visitor.

For those of you who may desire to further your knowledge of general principles of the laws pertaining to maritime injuries, and late developments, I recommend to you an excellent address by Admiral Edward C. Holden, Jr., President of the United States P. & I. Agency, Inc., one of Americas' leading maritime claims agencies, delivered on September 20, 1957 to the Federal Bar Association Convention in Washington, D. C., and the paper given by Ernest A. Carrere, Jr., of the New Orleans Bar, at the 1957 Tidelands Symposium conducted by the College of Law at Tulane University.

Insurance Covers

I now pass to a portion of the paper which is new, and which pertains to insurance coverages. Whether you represent the employer or the employee, or a third party who is a stranger to one or both of them, it is desirable for you, as a lawyer, to know something of the way insurance coverages are arranged.

When you are planning an operation for an employer, you can advise him from the legal standpoint as to his insurance needs, thus assisting his insurance broker; when you are drafting a suit to recover damages for a plaintiff, you will know what to expect in the way of policy coverages and defenses.

We are not concerned with property damage today and we can, therefore, limit our discussion of coverages to two general categories.

First, we will consider those insurances which come into play in the case of employer-employee relations and, second, those insurances which apply when no employee-employer relationship exists.

In the first category, we must, of course, consider land employees and also maritime workers who are not members of the crew of any vessel. There you will encounter the standard workmen's compensation policy with a Longshoremen's and Harbor Workers' Act endorsement. If the employer conducts operations on the Outer Continental Shelf, there will be a special endorsement extending the policy. Further, if the operations of the employer include the manning and operation of vessels, or if the status of the employees is doubtful, or varies from day to day and hour to hour, the workmen's compensation policy will contain a special employers' liability cover extended to insure liabilities for personal injury or death of members of the crew of vessels.

As you know from our earlier discussions, this means that the policy must cover liabilities under the Jones Act, possibly under the Death on the High Seas Act, and injuries arising from unseaworthiness. Many such policies specifically exclude liability for wages,

maintenance, cure, and transportation, but again, there is a special endorsement available which deletes this exclusion and thus affords coverage. Unless the liability for wages, maintenance, cure, and transportation is covered in a different policy which I will discuss in a moment or two, you, as counsel for the employer, must be quite sure that the exclusion is deleted or there will be an uninsured exposure.

The foregoing program is generally found in use in connection with large operations, where there are employees of many different types, or where, from a cost standpoint, it is preferable to other programs.

P. & I. Policies

However, there is another form of cover with which you may not be quite as familiar as you are with the compensation policy. I have in mind the Protection and Indemnity Policy which is ordinarily written in connection with pure marine operations. When a vessel owner obtains a policy of hull insurance protecting him for loss or damage to his vessel, he generally also obtains a companion policy, known as a Protection and Indemnity Policy, which is the marine insurance fraternity's substantial equivalent of a liability policy. The P. & I. policy, as it is known, covers many liabilities (although there are specific exclusions in some of them, such as an exclusion from any liability under any compensation law) in addition to loss of life and personal injury to crew, employees, and third parties. Basically, it is a policy of indemnity and responds only after the assured has been found liable for damages, and has discharged his liability.

Because underwriting of so-called wet marine insurance is virtually unregulated (the forms are not as highly standardized and regulated as fire or workmen's compensation insurance), we find many variations. In fact, there is nothing to keep the assured and the insurer from substantially modifying the forms which are in general use, except where such modification is repugnant to a particular statute.

The policies are not required to be on file with any state agency, which is one reason you may have difficulty verifying the existence of such insurance, learning the name of the underwriter, and the like. Marine insurers, as a rule, prefer to remain in the background in litigation and many of them do not undertake the investigation, handling, and adjustment of claims with the same directness as do automobile and other liability insurers. Some will permit a responsible assured to handle its own claims as though it were uninsured, with the understanding that after the claim has been disposed of with underwriters' approval a claim for reimbursement will be submitted. Even those who appoint counsel at the outset generally do so with the understanding that such counsel are acting, at least technically, on behalf of the assured.

At this point I may say that the impact of *Maryland Casualty Company v. Cushing* and other cases dealing with the same problem have modified, to some extent, this attitude of marine insurers for our Federal Courts are treating such insurers very much like conventional liability insurers, at least insofar as the Direct Action Statute is concerned.

Unlike the workmen's compensation

policy, the protection and indemnity policy, in its full form, almost always covers wages, maintenance, and cure, and transportation, unless deleted.

Some assureds, such as fleet owners or those engaged in mixed operations, find it preferable to carry insurance protecting them from claims by employees and crewmembers under a workmen's compensation policy with proper endorsements but also a protection and indemnity policy instead of another type of general liability insurance. If the two policies are properly written, the cover for wages, maintenance, cure, and transportation will be found in one or the other, and not in both, for otherwise the assured will be paying for dual coverage and problems of contribution, proration, etc., will arise in the case of a loss.

Non-Employee Claims

The second category involves the insurances designed to cover claims asserted by a non-employee. A deckhand on a tug may be injured while the tug is lying alongside a submersible drilling barge due to the negligent act of an employee of the drilling barge owner; the tug deckhand may be injured in a collision with another vessel and there may be no liability on the part of his employer for damages if the employer's vessel is not at fault. The service company employee may be injured by reason of the unseaworthy condition of the vessel he boards in the course of his employment, and so forth. In such cases, the employee's attorney must look to a person responsible, other than the employer, if, in his judgment, a recovery for damages is preferable to a compensation claim. Even if a compensation

claim is made, there will be a question as to whether or not subrogation should be attempted.

Generally, we can disregard the workman's compensation and employer's liability policy and look to the protection and indemnity cover of the stranger or to the existence of a comprehensive general liability policy. One or the other generally exists. I emphasize again that even if coverage for crew and employees is excluded from a protection and indemnity policy, there generally remains cover against liability for death or personal injuries of non-employees.

There is another situation which sometimes arises. Many contracts between a major oil company and a drilling contractor, or between a drilling contractor and a sub-contractor, contain special hold-harmless and indemnification provisions, the terms of which vary. Some of these purport to entitle the indemnitee to recover from the indemnitor for claims recovered against the indemnitee even though arising from the fault and neglect of the indemnitee. Premitting any discussion of the enforceability of such an agreement, we will concern ourselves only with the suit of injured "A" against the major oil company "B" and the claim-over by "B", on the basis of the indemnification agreement, against "C", the employer of "A". If the indemnification agreement stands up, "C" may find itself reimbursing "B" for a sum greatly in excess of any liability "C" would otherwise have to "A" under any compensation law. For this reason, "C" must be quite certain that his potential liabilities under such contracts are specially insured. One way in which this can be done is for the comprehensive general liability pol-

icy to be extended to cover liability.

Further Indemnities

Aside from the assumption of special liabilities under indemnification and hold harmless agreements, the operator should also be protected, by proper underwriting, against liabilities asserted against him arising out of the actions of his sub-contractors. This coverage, known either as "Independent Contractors" or "Contractor's Protective — work let or sub-let," is generally available under the Comprehensive General Liability Policy. In addition, the operator's principal, the major oil company, may wish to be named as an additional assured under this particular cover for the purpose of the particular contract, for when so named, the principal will be protected by the insurance if sued. Some principals, however, prefer for the operator to take out a special "Owner's Protective" Policy which will protect the principal from such claims. The operator should discuss the desirability of the various covers of this type with his broker and with the principal.

Most of us are reasonably familiar with the policy forms and methods of operation of our American insurance companies which have been quite active in the field and which will continue to render a real service to their assureds and to the general public.

Perhaps, however, we are less familiar with the characteristics of insurance underwritten by Underwriters at Lloyd's and British Insurance Companies. A substantial amount of the insurance presently in force in the tidelands is placed with London, and you, as an attorney, may encounter it frequently.

Primary protection and indemnity in-

insurance is quite frequently placed in London, but not generally, however, with Lloyd's. Most of it is written by the so-called "Clubs" which concern themselves primarily with this type of insurance. Some of it is placed through oil open cover contracts, the placement being handled by local brokers in this area who deal directly or indirectly with other brokers in this area, or in London. Almost uniformly one will find that the actual insurers at Lloyd's or in London deal with a London broker.

This British insurance is perfectly good. It will be found that London Underwriters take pride in honoring proper claims; that funds are available for prompt payment; and the rates are sometimes less than those charged for comparable insurance in the American market. As a matter of fact, some liabilities which cannot readily be insured in America are acceptable to London.

Jurisdictional Problem

However, to the uninitiated, insurance in London may pose some problems. For instance, before filing suit under a London cover, it would be advisable to examine the problem of jurisdiction quite carefully. There is usually a service of suit clause and, therefore, no problem insofar as the assured obtaining service is concerned, nor is there any real problem in securing an appearance by the defendants. However, generally, each of the individual underwriters on a risk is liable for his assumed proportion only, and a particular underwriter on any one risk is not liable for the obligations of the others. Hence, where a risk is widely spread, you may find that no one underwriter has a proportionate interest equal to the jurisdic-

tional amount sufficient to sustain a diversity suit on the law side of the Federal Court. Thus, even though no exception to the jurisdiction may be filed, there always remains the possibility that the Court will notice this want of jurisdictional amount *ex proprio motu* or, when the time comes to frame a decree, the Clerk may become aware of the fact that this requisite is lacking.

On the other hand, if you are primarily interested in maintaining a suit in the State Court and are not interested in Federal Court proceedings, I doubt seriously that you will need fear the possibility of an attempted removal to the United States District Court. I am of the opinion that a motion to remand would probably be successful.

Finally, although you may have anywhere from five hundred to five thousand subscribing underwriters to a given risk, the number depending upon many factors, you will find that if litigation is threatened, representatives of these underwriters will generally agree to an arrangement whereby you need not join everyone as an individual defendant but may sue only one, with other underwriters agreeing to be bound by the result of that suit.

Earlier, I mentioned the service of suit clause. In many Lloyd's policies one will find that service is authorized to be made upon Mendes & Mount, 27 William Street, New York, who are general counsel for Underwriters at Lloyd's in the United States. On rare occasions, an attorney who has questions about a Lloyd's policy may be unable to develop the answers locally or through London brokers. Generally, he will find that, within the bounds of propriety and insofar as representation of their princi-

pals and the interests of assureds permit, Mendes & Mount will cooperate upon receiving an inquiry and will greatly assist in solving or simplifying what, otherwise, might be a difficult and time-consuming problem. Furthermore, the Committee at Lloyd's, approached either through Mendes & Mount or directly, has a great interest in maintaining and preserving the best traditions of London insurance and may be counted upon to be equally cooperative.

The increase in jury verdicts, coupled with the extension of the doctrine, has led to vast increase of suits by injured maritime workers against vessel owners. Since the worker can always recover compensation, and knows that he stands a good chance of recovering a much larger lump sum as damages, his choice is almost inevitable.

Although the legal remedies available to the employee have not achieved a state of perfection, and in many instances the amounts awarded are unsupportably inadequate, we have, nonetheless, progressed to the point where virtually no valid injury need go uncompensated. The compensation acts, whatever their deficiencies, fill a definite need as do the rights granted to seamen and the general tort law.

I believe that one can discern an unfortunate trend toward attempting to by-pass or reject compensation benefits to seek damage awards. Many such efforts are entirely justified, but others result in conscious or unconscious coloration of the status of the employee, the facts and circumstances of the injury, and its extent. Human nature being what it is, the employee or his survivors become convinced that a damage award, in hand, is preferable to the receipt of

periodic compensation payments and in some cases, the attorney's judgment of the proper course to follow is affected by his natural sense of advocacy. The employer then resists what he considers an improperly founded claim or an exorbitant demand and litigation ensues, with unnecessary expense and delay incurred by all, to the profit of no one but counsel. With the natural sympathy of the Court and jury extended to the claimant, inevitably there follows the development of jurisprudence which cannot be logically supported.

On the other hand, no one can excuse, or fail to criticize, either the employer or the insurer, who over-reaches the employee, ignores his plight, or fails, in any respect, to treat him fairly, or to discharge his legal responsibilities. In times gone by, the seaman's employer was particularly vulnerable to such criticism for it is a matter of common knowledge that for many years settlements with seamen were usually inadequate and were successfully imposed upon him only because he was without knowledge of his rights or was in dire economic straits.

I respect the increase in awards, whether they be in compensation or damages, but I do not respect either the plaintiff's attorney who recommends prosecution of an unsound claim, not truly supportable by either the law or the facts, or the defense attorney who is unwilling or unable to give due recognition to a meritorious claim. It is, therefore, my sincere hope that as awards, recoveries, and settlements have become more realistic and equitable, the employer and employee, their counsel, and the insurer, will analyze and treat each case with the intellectual honesty it deserves.

Thimmesch Named Executive Counsel

WIECK W. Thimmesch, Jefferson Parish attorney, assumed his duties in the newly created post of administrative executive and legal counsel for the Louisiana State Bar Association on December 16. Announcement of his appointment was made by President J. J. Davidson, following a meeting of the board of governors.

Chief functions of the new legal counsel, the president said, will be in the fields of administrative duties and unauthorized practice of law. He also will assist in public relations and, if asked by the Committee on Grievance and Ethics, assist in such work as it designates.

Thimmesch, a native of Baton Rouge, currently resides at 3407 47th St., Metairie. Until the opening of the bar association's new offices in the new Supreme Court building later in the year, his association activities will be conducted from his office at 2003 Metairie Road.

The new legal counsel is a graduate of Fortier High School, New Orleans; of Louisiana State University, where he was awarded his B.A. degree in 1946, and of



Loyola University School of Law, 1949, with an LL.B. degree.

Thimmesch is a past officer of the Carrollton Post of the American Legion, vice president of the Metairie Business Association, and a member of the American bar, Louisiana, Orleans and Jefferson Parish bar associations. He has been active in the practice of law since 1949.

References to Sims' Article

¹Louisiana Revised Statutes, 23:1021, *et seq.* 2317 U.S. 249, 63 S.Ct. 225, 87 L.Ed. 246, 1942 A.M.C. 1653 (1942).

^{2a}See, also, discussion of *Richard v. Lake Charles Stevedores*, *infra*, p. 15.

³33 U.S.C. § 901, *et seq.*

⁴*Czaplicki v. Hoegh Silvercloud*, 351 U.S. 525, 76 S.Ct. 946, 100 L.Ed. 1387, 1956 A.M.C. 1465 (1956).

⁵*Ryan Stevedoring Co. v. Pan-Atlantic SS Corp.*, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133, 1956 A.M.C. 9 (1956).

⁶43 U.S.C. Supp. 1, § 1331, *et seq.*

⁷Federal Register.

⁸43 U.S.C.A. § 1301, *et seq.*

⁹46 U.S.C. 688.

¹⁰350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775, *rehearing den'd.*, 350 U.S. 960, 76 S.Ct. 345, 100 L.Ed. 834.

¹¹240 F.2d 674, *rehearing den'd.*, 242 F.2d 667 (CA 5 1957), *cert. den.*, October 14, 1957.

¹²352 U.S. 370, 77 S.Ct. 415, 1 L.Ed. 2d 404 (1957).

¹³245 F.2d 437 (CA 1 1957), *cert. granted*, November 12, 1957.

¹⁴87 So.2d 339 (1956).

¹⁵172 F.2d 542 (CA 5 1949).

¹⁶95 So.2d 830 (1957), *cert. den.*, October 8, 1957.

¹⁷46 U.S.C. 761, *et seq.*

¹⁸328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099, 1946 A.M.C. 698 (1946).

¹⁹245 F.2d 175 (CA 2 1957).

The Louisiana State Law Institute: Its Purpose And Current Progress

by J. Denson Smith

THE Louisiana Legislature in 1938 chartered the Louisiana State Law Institute as an "official advisory law revision commission, law reform agency and legal research agency for the State of Louisiana." In so doing it gave legislative recognition and support to a unique organization that had been created earlier in the year under the auspices of the Louisiana State University Board of Supervisors. The university acted on the recommendation of a group of members of the legal profession in Louisiana who had been brought together in support of an idea emanating from the faculty of the Louisiana State University Law School some five years earlier.¹

That plan, as originally conceived and later given concrete form, called for the creation of an institute to be devoted to the improvement and advancement of the law and legal science and the preservation of Louisiana's legal heritage as a jurisdiction dedicated to the civilian system of codified law. The plan of organization of the institute was molded in part on that of the American Law Institute. Assistance was obtained also from the legislation that authorized the formation of the Law Reform Commission of the State of New York. At its organization meeting at the Louisiana State University Law School, John H. Tucker, Jr., of the Shreveport Bar, was elected president and has served in that capacity to the present time.

Revising Code of Practice

Because of the obligation imposed on the institute by its legislative charter "to consider needed improvements" in the law and "to make recommendations concerning the same to the legislature," it is

presently engaged in preparing a revision of the Louisiana Code of Practice and the Code of Criminal Procedure. The *projet* for revising the Code of Practice should be completed, except for certain editorial work, by the middle of the year. The institute plans to request the calling of a special session of the legislature to consider the revision, as it did for the adoption of the Revised Statutes of 1950. The draft of the revision of the Code of Criminal Procedure will be completed in perhaps two years. Professors Henry G. McMahon, Leon Hubert and Leon Sarpy are serving as reporters on the former and Professor Dale E. Bennett on the latter. Additional reporters will be added to the *projet* for the revision of the Code of Criminal Procedure when the revision of the Code of Practice has been completed.

In furtherance of its responsibility to "study the civil law of Louisiana and the Louisiana jurisprudence and statutes" and to recommend needed reforms, the institute has undertaken a study of the mineral law under the direction of Professor Eugene Nabors of the Tulane Law School. A preliminary draft has already been considered and a revised draft of proposals for improvement in this field will be submitted shortly.

There have been insistent demands that some effort be made by the institute to improve the Louisiana law relating to trusts and "to receive and consider suggestions" from members of the legal profession, public officials and the public generally and "to recommend such changes as it deems necessary to bring the law of the state into harmony with modern conditions." Accordingly the Institute appointed Professor Oppenheim of the Tulane Law faculty to undertake a study of the subject and an advisory committee of qualified members of the legal profession and informed laymen will be named to assist him. A report from Professor Oppenheim will be forthcoming at a later date.

In response to its obligation "to make available translations of civil law materials and to provide studies and other doctrinal writings for the better understanding of the civil law of Louisiana and the philosophy upon which it is based," the institute has now completed the translation of Planiol's *Traité Élémentaire de droit civil* and has distributed a number of studies dealing with the civil law and proposing needed improvements.

The institute submits a biennial report to the legislature in which are included specific recommendations for reform of particular provisions of the code or the general statutes. By legislative direction it serves as the official agency charged with the responsibility of keeping the Louisiana General Statutes in a constant state of revision. To this end after each session of the legislature it prepares a supplement to the general statutes integrating therewith the acts adopted.

In addition to the reporters and the advisory committees, the working body

of the institute and its governing authority is its council. Except for two or three months during the summer, the council meets about every thirty days in two-day sessions to review and act on the drafts prepared by the reporters.

Junior Bar Participation

The council has given particular attention to the importance of developing a group of the younger members of the bar to assume leadership in the field of law improvement and reform and to carry forward the work of the institute as time wears on. To this end it grants honorary junior membership each year to an outstanding graduate of the Loyola, Tulane and Louisiana State University Law Schools. Of more immediate significance, several years ago it asked the legislature to amend its charter so as to make the chairman of the Junior Bar Section of the Louisiana State Bar Association an ex-officio member of the council. In addition, by an amendment to its by-laws, it has provided for the selection of two additional members of the Junior Bar Section to attend meetings of the council as official representatives of the section and has authorized the attendance of another two members of the section as observers at the meetings of the council. In making these selections the council acts on the basis of recommendations submitted to it by the section. In making its recommendations the Junior Bar Section is required to name at least one junior honorary member of the institute.

The members of the Junior Bar Section who have served with the council have been outstanding in the regularity of their attendance, in the interest they have manifested in the work of the coun-

cil and in the assistance they have rendered. They have been eager to serve on committees and to undertake any other assignments they have been asked to accept. In passing, it should be noted that a former chairman of the Junior Bar Section who served as an ex-officio member of the council has now been elected a member of the council in recognition of his professional attainments and his dedicated interest in the work of the institute. The profitable and inspiring experience the institute has had with the members of the Junior Bar gives adequate assurance that the destiny of the institute will be in competent, experienced and devoted hands in the future and that Louisiana's position of leadership in law improvement and reform will be strengthened and confirmed.

Council Members

Members of the Louisiana State Law Institute:

Cuthbert S. Baldwin
D. Elmore Becnel
Dale E. Bennett
Richard J. Bertrand
C. C. Bird, Jr.
Robert E. Brumby
Eugene A. Conway
Harriet S. Daggett
Joseph Dainow
J. J. Davidson
C. H. Downs
Charles E. Dunbar, Jr.
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Charles F. Fletchinger
Ray Forrester
Howard B. Gist
Edward L. Gladney
Solomon S. Goldman
Jack P. F. Gremillion
Joe B. Hamiter

Milton M. Harrison
Paul M. Hebert
N. Smith Hoffpauir
Leon D. Hubert, Jr.
Fred G. Hudson, Jr.
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T. Haller Jackson, Jr.
Alvin O. King
Robert L. Kleinpeter
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Monte M. Lemann
John J. McAulay
Henry G. McMahon
George T. Madison
John M. Madison
Sumter Marks
Wm. F. M. Meadors
Ben R. Miller
Eugene A. Nabors
Leonard Oppenheim
A. E. Papale
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John R. Pleasant
LeDoux R. Provosty
Charles J. Rivet
Victor A. Sachse
Leon Sarpy
Andrew L. Sevier
Alex F. Smith
J. Denson Smith
Frank J. Stich
Oliver P. Stockwell
Walter Suthon
Bascom D. Talley, Jr.
Paul C. Tate
John H. Tucker, Jr.
M. Truman Woodward, Jr.
J. Skelly Wright

Representatives of the Junior Bar at council meetings: George B. Hall and George W. Pugh.

Observers for Junior Bar at council meetings: Jack C. Caldwell and Robert T. Jordan.

Observations of Local Bar Activities

by Ben R. Miller

FOR eighteen years outstanding local and state bar associations have been awarded Awards of Merit by the American Bar Association under the sponsorship of the Bar Activities Section thereof.

Each year the interest in this competition has increased, as has the caliber of achievements by those associations who have entered the entries.

Awards are presented in five categories. Among state bar associations an award is presented to those with a membership of more than two thousand, and another award to those state bar associations with membership of less than two thousand. The other three categories are for the local bar associations — large, medium and small. A city or county association with more than eight hundred members is in the category of a large local association; those with membership between one hundred and eight hundred are in the medium category; and the third category is for those with less than one hundred members. Winning entries have come, in that latter category, from associations with as little as fifteen members.

Baton Rouge Only Winner

The Baton Rouge Bar Association, as far as I know, is the only Louisiana association which has ever entered this contest, and it won the award in 1950 — its first and only entry. From having seen many of the entries over the past several years, however, I can assure you that there have been many years in which our state association and certain

of our local ones would have made a creditable showing had they entered.

A wealth of ideas for all state and local associations can be readily obtained from an examination of the records of those who did enter this contest. At all regional and annual meetings of the American Bar Association certain of the more current winning entries are on display, and a summary of each year's awards can be obtained from the American Bar Center in Chicago. A copy of each winner's entry, finally, goes to the Library of Congress.

I will discuss with you today the entries for 1956, 1955, 1954 and 1953.

The outstanding achievements, of course, always fall into the two categories; self-service to the members, and service to the public.

Self-Service to Members

Without attempting to rank them in importance, these are some of the more interesting and significant activities of this nature, or so it seemed to me:

(1) *Inter-Professional Cooperation*

Local agreements with medical societies, accountants and realtors have proven very beneficial. A unique type of inter-professional cooperation exists in Louisville, Kentucky, where a Law-Science Foundation was established and which functions excellently through the cooperation of the bar, the medical socie-

Mr. Miller is chairman of the Section of Bar Activities, American Bar Association. His paper featured the Alexandria conference meeting presented by the Section of Local Bar Organizations.

ty and the facilities at the University of Louisville.

(2) *Office Management*

Wisconsin and North Carolina, among others, furnish their members a loose-leaf advisory handbook on office management and fees.

Legal forms and work sheets are distributed to their members by the Louisville and San Antonio Bar Associations, among others, and by the state bars of Florida, Illinois and Minnesota.

In Iowa the state bar acts as central purchasing agent of office equipment and office supplies for those of its members who wish to utilize this service, and at considerable savings.

The Baton Rouge Bar, by the way, has done streamlining of certain Notarial Forms that have benefitted the Bar, the Clerk of Court's office, and the client.

(3) *Financial Assistance to the Needy Lawyer or his Widow*

Scranton, Pa., has set up a trust fund, the income of which is used to aid (in strict confidence) needy lawyers and their widows.

(4) *Placement Service*

In San Francisco during 1954, over 250 applications were received for service and some 25 or 30 were actually successfully "placed".

(5) *Group Life Insurance*

The State Bar of Minnesota and the Bars of Baltimore and St. Louis, among others, have this program. Here again, Baton Rouge has had a *group life insurance* program since 1950.

(6) *Preventive Law*

San Antonio sponsored "newspaper ads" encouraging and educating the public of their need to consult lawyers in many different, typical, day to day types of transactions.

(7) *New Bar Association Ideas and Techniques*

The State Bar in Wisconsin from time to time issues a pamphlet on "How to do it" where new ideas and techniques are explained for the primary benefit of committees of the State Bar and Officers of the Local Bar.

(8) *A Legislative "Checklist"*

In Illinois, within two weeks of the adjournment of the Legislature, a digest of laws affecting the practice of the average lawyer in general practice is mailed to all members. Requests for further information and for copies of specific acts are handled at cost.

(9) *Supreme Court Calendar Service*

In states such as Wisconsin and Virginia, members are promptly alerted on the cases and issues pending in the Supreme Court.

Public Service

(1) "*Law In Your Life Week*", by the St. Louis Bar featured guided tours of public buildings; mock trials using the public as jurors; seminars on everyday problems before schools, business, professional and trade organizations, and showing the film "Living Under Law" to civic and other groups.

Toledo, Ohio, also has utilized the "tour" idea. And, I believe, it was Peoria, Ill., which first produced the film "Living Under Law".

(2) *Forums*

Atlanta had five forums on such intriguing topics as: "How to Save Money on Your Income Tax;" "Problems of Marriage, Divorce and Children;" "Do You Quarrel With Your Neighbors?"; "What's Going to Happen to You in Your Old Age?"; "What Will Happen to Your Money When You Die?"

(3) *Radio, TV and Newspaper Public Relations Programs*

Question and answer panel discussions; dramatic skits; a six program telecast portraying the development of a personal injury case; spot announcements to explain legal aid offices; regular law columns in the local newspapers; display racks with pamphlets in banks, homesteads and in public buildings—all these have been used to great advantage and benefit. St. Louis, Chicago, Louisville, Toledo and Sioux City, Iowa, are among the local bars who have used all or some of these types of programs.

(4) *Speakers Bureau*

An effective speakers bureau, especially if there is arranged a speakers kit, can be very helpful when made available to church groups, civic clubs, parent-teacher organizations, etc., on matters of everyday interest to laymen.

The Illinois, Kansas and Minnesota State Bars and Louisville, Jacksonville, San Francisco, Peoria, Akron, Allentown (Pa.), and Lorraine County (Ohio) are among the local bar associations which have sponsored such speakers bureau ideas on various matters of preventive law, as well as on appeals for civic and governmental purposes.

A most valuable effort was that in St. Louis recently, when the Junior Bar there assumed the responsibility for programs to sell the people of St. Louis on a proposed drastic change in their city government plan. A number of regular scheduled open town meetings, so to speak, were held and proponents and opponents from all walks of life literally spoke their minds in open and unfettered debate. These were televised and later that day or evening were carried over the local stations. For those inter-

ested in a most effective public relations selling job, I believe a completely documented film can be borrowed from the St. Louis Bar Association.

(5) *American Citizenship*

Dignified and impressive naturalization ceremonies are, of course, used rather widely. In Akron, Ohio, however, the local bar in cooperation with the City Board of Education prepared a very fine booklet describing the local city and county government for use in the public schools of Akron.

(6) *Press Awards*

These have incalculable value and stimulate better cooperation with and recognition of the press. As you know this has been recently started in Louisiana. California has a very effective system of such awards—for the best story, editorial or feature on some phase of the administration of justice and the journalistic fraternity, Sigma Delta Chi, itself makes the selection.

(7) *Judicial Selection*

Jacksonville, Florida, and Maricopa County, Arizona, are two of the more recent local associations that now take polls of their members to determine the best qualified judicial candidates on the local level, with the results tabulated and released to the press for appropriate publicity. Since 1950 Baton Rouge has been doing this and New Orleans has had a similar program for many years.

(8) *Associate Membership for Senior Law Students*

Minnesota has this interesting idea, at a cost of only \$1.00 per year. It certainly benefits the State Association to get the Senior Law Student interested in Bar Activities, and it gives the Senior Law Student the opportunity of meeting the active practicing lawyer.

Report on Board of Governors' Meetings

AT the conclusion of the two-day Seventh Louisiana Conference of Local Bar Associations, held at the Hotel Bentley in Alexandria, November 22-23, the Board of Governors of the Louisiana State Bar Association reported the following actions:

- (1) Considered proposal by Ben R. Miller, of Baton Rouge, that L.S.B.A. sponsor and mail to members publication listing all cases pending before State Supreme Court and questions in each case. Referred to L.S.B.A. Secretary for study with Executive Counsel and report to Board at future meeting;
- (2) Considered desirability of studying a group life insurance plan for members of L.S.B.A. and authorized appointment of a committee to study feasibility of initiating such a plan through this Association as supplementary to American Bar Association Life Insurance Plan;
- (3) Received but took no action on House of Delegates resolution referring the question of Revision of Appellate Jurisdiction in Louisiana to Committee for further study;
- (4) Received and noted House of Delegates resolution recommending to State Board of Education required courses in Louisiana History for all state supported educational institutions;
- (5) Unanimously approved and adopted House of Delegates resolution urging the enactment of U. S. Senate Bill 1165 to provide compensation and promotion opportunities for lawyers in the Military Services commensurate with the special professional pay and promotion schedule now available to physicians, dentists and veterinarians;
- (6) Received and noted the House of Delegates resolution to appoint a committee of the House to study methods necessary, including statutory revision, to restore admissions to the Bar by examination and make recommendations to the House at its next called meeting;
- (7) Received and noted the House of Delegates resolution that a committee of the House be appointed to study the L.S.B.A. Charter and By-Laws and determine the relationship of the House of Delegates, the Board of Governors, the Committees and Sections of the Association and inter-relationship of each;
- (8) Unanimously adopted resolutions outlining procedures for nomination of candidates and election of members to the Nominating Committee, the House of Delegates and the Board of Governors;
- (9) Unanimously approved House of Delegates resolution and adopted its resolution thanking Alexandria Bar Association for hospitality shown the members of the Association, the House of Delegates and the Board of Governors and the

fine work in connection with the Seventh Conference of Local Bar Associations, the meetings of the House of Delegates and the Board of Governors, November 21st-23rd, 1957;

- (10) Approved recommendation of its special committee to interview and recommend applicants for position of Executive Counsel and employed Wieck W. Thimmesh of Jefferson Parish in this position; authorized employment of secretary for Executive Counsel.

THE January meeting of the Board of Governors was held in the association's headquarters in New Orleans, on Saturday, January 11. The following actions were noted:

- (1) Unanimously adopted resolution amending resolution approved at previous meeting to authorize study of over-all group life, health and accident insurance plans for members of L.S.B.A.;
- (2) Considered proposal by chairman of Committee on Professional Ethics and Grievances to establish special committee for receiving and acting on complaints against attorneys that do not vio-

late canons of ethics and to resolve disputes between attorneys as to representation, fees and other matters and authorized appointment of committee to study and furnish recommendations to Board;

- (3) Adopted resolution requesting Leon Sarpy, Chairman, Committee on Jurisprudence and Law Reform, to report recommendations for Legislation to be supported by the Association to House of Delegates at February meeting;
- (4) Called next meeting at Baton Rouge on February 15, 1958, following House of Delegates meeting.

(NOTE: The L.S.B.A. amended charter requires Board of Governors to meet within ten days of House of Delegates meeting and review all resolutions adopted by House. House of Delegates resolutions approved by Board or on which no action is taken become official action of Association. Resolutions of House of Delegates disapproved by Board must be submitted to membership of association for vote by secret ballot within ten days after Board of Governors meeting.)

House of Delegates Action at Alexander

AT its called meeting in Alexandria, November 21, the House of Delegates took the following action:

- (1) Heard talks by Chief Justice John B. Fournet, Judge George W. Hardy, Jr., Second Circuit Court of Appeal, and John H. Tucker, Jr., on Revision of Appellate

Jurisdiction in Louisiana. Then discussed and referred that question back to Committee for further study with instructions to report to the House at a special meeting which was called for February 15th, 1958, at Baton Rouge;

- (2) Adopted a resolution recommending to the State Board of Education that regular, prescribed courses of study in Louisiana History be required of students in all state supported elementary schools, high schools, colleges, universities and other educational institutions;
- (3) Unanimously adopted a resolution proposed by the American Bar Association urging the U. S. Congress to enact legislation granting lawyers in the armed services compensation and promotion opportunities commensurate with that afforded physicians, dentists and veterinarians in the armed services;
- (4) Adopted a resolution to appoint a House Committee to study and recommend to the House at its next meeting methods necessary, including statutory revision, to restore admissions to the Bar by examination;
- (5) Adopted a resolution to appoint a House Committee to study the Association's Charter and By-Laws and the relationship of the House of Delegates, the Board of Governors, the committees and sections of the Association and the inter-relationship of each and to report to the House with recommendations;
- (6) Unanimously adopted a resolution commending and thanking the Alexandria Bar Association for its planning and hospitality in connection with the House meeting. The Secretary has forwarded a certified copy of this resolution to the Alexandria Bar.

Put These Dates on Your Calendar:

April 23, 24, 25, 26, 1958

**No practicing lawyer can afford to miss this year's
Annual Meeting of the Louisiana State Bar Association
at Biloxi, Miss.**

Headquarters Hotel — The Buena Vista

Reservation blanks for the accommodations you need will be sent you shortly by the Secretary. Please be prompt with your reply.



News of Local Bar Associations

Baton Rouge Legal Aid Expansion Approved

Through the efforts of the Baton Rouge Bar Association, the City of Baton Rouge becomes the third municipality in Louisiana to provide free Legal Aid service on a full-time, year-round basis. Financial assistance authorized by the United Givers and the Baton Rouge City Council now makes possible the employment of a full-time attorney and secretary.

Until the decision to expand the Legal Aid operation was made in December, the Legal Aid Society sponsored by the Baton Rouge bar had operated an office only on a part-time basis, financed by an annual United Givers appropriation of slightly more than \$2,000. Information from Baton Rouge is to the effect that an approximate \$10,000 will be available through October, 1958.

Recommendations for the new setup were made by a committee appointed by association president *Byron R. Kantrow* and headed by *Warren Watson* and *Arthur J. Cobb*. The society was incorporated as a non-profit organization, including a 15-man board of directors drawn from the Baton Rouge citizenry, including seven attorneys. Ex-officio members of the board are the president of the Baton Rouge Bar Association and the dean of the LSU law school.

Earlier, at the association's November dinner meeting, approximately 200 members heard a report on the need for

a full-time Legal Aid program.

Whitfield Jack, Shreveport, chairman of the Louisiana State Bar Association's Legal Aid Committee, told the group that Baton Rouge is the current target of his group. "We hope to convince you," he said, "that Baton Rouge has grown to the point where it must have a full-time, organized Legal Aid setup." Next in line for a Legal Aid campaign, he said, are Lake Charles, Monroe and Alexandria.

On a forum moderated by Jack were *Edward Koch*, Criminal Legal Aid division, New Orleans; *Melvin Bellar*, Shreveport Legal Aid Society head, and *Robert Gibson*, Civil Legal Aid division, New Orleans. Each panelist argued that any city of more than 100,000 population has a definite need for an organized Legal Aid operation.

Bellar reported that Shreveport's office is guided by a 15-man committee, made up of seven attorneys and eight prominent citizens, representing a cross-section of the city. He is convinced, he said, that "the lay members of this committee are directly responsible for getting the Community Chest to increase our operating budget from \$8,000 to \$11,000 this year."

In the first year of operation, he said, he succeeded in securing more than \$56,000 in judgment for wives who were deserted in Louisiana under the Reciprocal Support Act.

Koch, who only represents men and women charged with crimes, said his office was set up in 1941 and now has

two fulltime attorneys and one parttime attorney assisting in court trials. He said the primary need of his office is a fulltime investigator to relieve attorneys for the important tasks of preparing legal documents and appearing in court in behalf of indigent clients.

Although Legal Aid cases take up about one-fourth of the docket, he said, the two fulltime attorneys must compete in court against the district attorney, his 17 assistants, three clerks, eight secretaries and five fulltime investigators, plus some 1500 policemen who also do investigative work for the district attorney's office.

Gibson, who confines his work to civil cases, said theoretically he has some 30 to 70 practicing attorneys for assistance in trying cases. But this panel does not provide too much assistance, he said, since they are unfamiliar with the cases at point and are thereby hampered in their courtroom procedure. He likened his gratis legal service to a doctor who is a general practitioner in the country. "We get just about every kind of case you can name in a year's time," he told the Baton Rouge group.

Lockard Heads Shreveport Bar

Leonard L. Lockard, a practicing attorney for more than 30 years, was installed as president of the Shreveport Bar Association at the annual banquet held on Dec. 11 at the East Ridge Country Club. He succeeds *John M. Madison* in that post.

Other officers of the Shreveport unit are *Dixon Carroll*, first vice-president; *Marlin Risinger, Jr.*, second vice-president, and *Stuart D. Lunn*, secretary-treasurer.

Principal speaker at the annual meeting was *W. St. John Garwood*, senior associate justice of the Texas Supreme Court, of Houston. He was introduced by *Col. John H. Tucker, Jr.*, of Shreveport, president of the Louisiana Law Institute, and a long-time member of the Shreveport bar.

Lockard, the new president, received his B.A. degree from the University of Mississippi in 1923, and his law degree from the same university three years later. He began practicing law in Shreveport in 1931 and, later, formed a partnership with *Harry V. Booth*. The firm now includes *Whitfield Jack* and *John R. Pleasant*.

Heads Orleans Junior Bar

Thomas C. Wicker, Jr., was elected chairman of the Junior Bar Committee of the New Orleans Bar Association at the November meeting. He succeeds *Frank J. Stich, Jr.*, who was elected when the organization was founded last July.

Other officers are *David J. Conroy*, vice-chairman; *Val A. Schaff, III.*, secretary, and *Harold A. Lamy*, *Peter H. Beer*, *John E. Jackson, Jr.*, *James O. Manning*, *Ralph D. Dwyer* and *John G. Weinmann*, members of the board of directors.

Alexandria Elects Officers

Tom C. McClure, Jr., is the new president of the Alexandria Bar Association. He succeeds *Isaac M. Wahlder*.

The bar group also named *City Judge George M. Foote* vice-president, and re-elected *William P. Polk* as secretary-treasurer.

Washington Parish Officers

Haley M. Carter, of Franklinton, succeeded *John W. Anthony*, Bogalusa, as president of the Washington Parish Bar Association on January 1.

Elected to serve with Carter for the coming year were *Robert T. Rester*, Bogalusa, vice-president, who succeeds *Ellis C. Magee*, of Franklinton, and *Miss Ruth Gentry Talley*, of Bogalusa, who takes over the duties of the retiring secretary-treasurer, *Dan W. Graves, Jr.*

Henican Heads Orleans Bar

New president of the New Orleans Bar Association is *C. Ellis Henican*, elected at the organization's annual meeting at the St. Charles Hotel in November. Outgoing president of the group was *Joseph McCloskey*.

Other officers elected were *Mayer L. Dresner*, president-elect; *Michael M. Irwin*, first vice-president; *Bat P. Sullivan, Jr.*, second vice-president; *Albert J. Flettrich*, third vice-president; *Charles L. Rivet*, secretary, and *W. W. Young, Jr.*, treasurer. New members of the executive committee are *Lee C. Grevemberg*, *Frank J. Stich, Jr.*, *Robert G. Polack* and *Harold M. Rouchell*.

Dr. Israel H. Weisfeld, rabbi of Beth Israel Synagogue, was the principal speaker at the dinner meeting of the New Orleans Bar Association, held in the Jung Hotel on February 5.

Dr. Weisfeld received his Rabbinic ordination from Yeshiva University in New York City and a degree of doctor of philosophy from the University of Chicago. He is the author of several books and a member of the faculty of the University of Miami.

Minden Bar Elects

Enos McClendon, of Minden, recently was elected president of the Webster Parish Bar Association. He succeeds *Graydon Kitchens, Sr.*, in that post.

Other officers elected to serve with him are *Cecil Lowe*, vice-president, and *George Fort*, secretary-treasurer.

The election took place in mid-January at a shrimp boil given by *Clifton Yeates* at his camp on Lake Bistineau. The party was given by Yeates and his law partner, *Henry Hobbs*.

Others in attendance included *Judge James E. Bolin*, *Henry Matthews*, *R. B. Atkins*, *Russell Adams*, *John Hudson*, *Red Wilson*, *Sheriff J. D. Batton*, *Roland Hennigan*, *Donald Veitch*, *L. M. Wimberly*, *Loye Baker*, *H. C. Benefield*, *Clarence Wiley*, *Richard Garrison*, *Eugene Frazier*, *John T. Campbell*, *Cecil Campbell*, *Charles Marvin*, *John Benton*, *Dan Stewart, Jr.*, and *Dan Stewart, III*.

Shreveport Speaker

Louis B. Claverie, of New Orleans, spoke on "Legal Ethics," at the January meeting of the Shreveport Bar Association. A member of the firm of Phelps, Dunbar, Marks, Claverie and Sims, the speaker has been a member of the Tulane Law School faculty since 1944, teaching corporation law and legal ethics.

Claverie is a former vice-president of the New Orleans Bar Association.

Editor's Note: Contributions to this column from local bar association officers should be addressed to the Editor, Louisiana State Bar Journal, 805 International Building, New Orleans.



HEARD AROUND THE CIRCUITS

Speaks to Orleans Club

"The Law and the Ladies" was the subject of an interesting speech made to the Orleans Club of New Orleans in December by *Harry McCall*, vice-president of the Louisiana State Bar Association. Women's rights under Louisiana law, especially in the fields of community property and family relationships, were discussed in detail by the speaker. Audience reaction, according to the program chairman, *Mrs. Alton Ochsner*, was "excellent."

Join Legal Firm

William Stein, Jr. and *Charles E. Lugenbuhl*, both of New Orleans, recently became members of the firm of Lemle and Kelleher, with offices in the National Bank of Commerce Building, New Orleans.

Admitted to Bar

George W. Hardy III, a Rhodes Scholar and son of the senior judge of the Second Circuit Court of Appeals, *George W. Hardy Jr.*, Shreveport, was admitted to the practice of law on January 24, in ceremonies before the Louisiana Supreme Court. Hardy is a graduate of the LSU School of Law.

Following the ceremony, he left for Chapel Hill, N. C., where he is presently an instructor in the University of North Carolina Law School.

Hardy was presented to the Supreme Court by *Frank McLaughlin*, chairman

of the State Bar Association's committee on bar admissions, after *V. J. Courville*, clerk of the court, had administered the oath. A short address of welcome into the practice of law was offered the young lawyer by *Associate Justice Joe B. Hamiter*.

Heads N. O. Legal Aid

Leo R. Wertheimer recently was re-elected president of the New Orleans Legal Aid Bureau, at a meeting of the board of directors. Other New Orleans' lawyers who will serve with him as officers and members of the board are:

Fred S. Weiss, treasurer; *Mrs. Elizabeth R. Haak*, secretary, and board members *Harry V. Souchon*, *Numa V. Bertel, Jr.*, *Louis B. Claverie*, *Charles E. de la Vergne*, *Wilmer G. Hinrichs*, *Monte M. Lemann*, *Frank C. Moran, Jr.*, *Warren E. Mouledoux*, *Russell J. Schonekas*, *Ben L. Upton* and *Harry S. Verlander, Jr.*

On Active Duty Training

Lt. Col. Lansing L. Mitchell, New Orleans, U. S. Army reservist, recently was assigned to the Judge Advocate Division of the U. S. Army Transportation Terminal Command, Gulf, for 15 days of active duty training. Col. Mitchell, associated with the firm of Deutsch, Kerrigan and Stiles, also serves in a reserve capacity as the director of the Judge Advocate General's Department, New Orleans U. S. Army Reserve School. He is a former special agent of the F.B.I.

Joins New Orleans Firm

Johnny Johnson, of Opelousas, recently joined the New Orleans firm of Monroe and Lemann as an associate. While in Opelousas he was associated with Attorney Kenneth Deshotel.

Judges' Council Organized

Judge Leo Blessing, of the New Orleans Juvenile Court, was elected president of the Louisiana Council of Juvenile Court Judges at the organizational meeting held in New Orleans in December. Juvenile, city and district judges from all over the state adopted a constitution designed to build an organization for the improvement of the "standards, practices, procedures and effectiveness of the juvenile courts of Louisiana."

Judge Frank Voelker, Lake Providence district court, was named president emeritus, with *Judge Walter Hunter*, of the Alexandria district court, vice-president, and *Judge Kaliste Saloom*, of the city court of Lafayette, named secretary-treasurer.

Directors are *Judges Julian E. Bailes*, *A. J. Jones*, *Mack Barham*, *L. Julian Samuel*, *Fannie E. Burch*, *Percy E. Brown*, *Joe W. Sanders*, *John J. Wingrave* and *Chris Barnette*.

Other purposes of the council, as named in the constitution, are:

1. To interpret the philosophy of the juvenile court and to secure satisfactory legislation to enable the courts to function efficiently and effectively.
2. To foster studies and surveys in juvenile delinquency and neglect and related fields in co-operation with other agencies performing similar tasks.
3. To co-operate with public and pri-

vate agencies in developing and co-ordinating services to children.

4. To engage in such other activities as may be necessary for the improvement of juvenile courts and the preservation and protection of the rights of juveniles in Louisiana.

Lake Charles Attorney Dies

Irving V. Maurer, who designed and built Lake Charles' first big industrial plant—the Mathieson Alkali Works—in the early 1930's, died at his Lake Charles home in mid-December. At the time of his death, Maurer was a prominent attorney in that community, a career he began in 1948 after a long and successful life in industrial engineering.

He studied law in the offices of McCoy, King and Anderson, and was admitted to the bar in 1948. At the time of his death, Maurer was associated with *Joseph J. Tritico*. He was a native of St. Louis, Mich.

Latest Admissions to Bar

The Committee on Bar Admissions recently certified 22 graduates of the L.S.U., Loyola and Tulane Law Schools to the Supreme Court as qualified for admission to the practice of law. Certified by the deans were the following:

Louisiana State University: *Russell Bankston*, Baton Rouge; *Edgar Fisher Barnett*, Baton Rouge; *Robert Justin Donovan, Jr.*, Shreveport; *Norman Pierre Foret*, New Orleans; *John Norman Galaspy*, Pelican; *David Henry Garrett*, Jonesboro; *William Bernard Kramer*, Monroe; *Frank Leon Maraist*, Kaplan; *Patsy Jo McDowell*, Baton Rouge; *Wil-*

liam Lasater McLeod, Jr., Lake Charles; *Elmer Ramirez-Vincenty*, Sunset; *Charles Henry Ryan*, Baton Rouge; *Lyle Edward Smith, Jr.*, Baton Rouge, and *John Silver Stephens*, Coushatta.

Loyola University: *Matthew Ferdinand Belin*, New Orleans; *Charles Rosamond Cassidy*, Jennings; *Robert George Haik*, New Orleans; *Bernard Marcus*, New Orleans, and *Thomas James Taylor*, New Orleans.

Tulane University: *Arthur Robert Aitkens*, New Orleans; *Robert Edward Blackwell*, New Orleans, and *Ruth Marshall Ballard Seemann*, New Orleans.

New Firm Members

An announcement dated February 1 received from Monroe and Lemann, with offices in the Whitney Building, New Orleans, reads as follows:

"Monroe and Lemann take pleasure in announcing that *D. Douglas Howard*, formerly with the Texas Company, *Bat P. Sullivan, Jr.*, *Melvin I. Schwartzman*, *Andrew P. Carter*, *Walter J. Suthon, III*, *Thomas B. Lemann* and *Nigel E. Rafferty* have become members of this firm and that *James D. Johnson, Jr.* and *Fernand F. Willoz, III*, have become associated with this firm."

Late D. A. Memorialized

A memorial resolution commemorating the death of *L. O. Pecot*, former district attorney of the 16th judicial district, was adopted recently by a committee of attorneys from Iberia, St. Martin and St. Mary parishes.

Pecot died from injuries sustained in a boating accident last Oct. 17. He was 72 years old and had served as district attorney for five consecutive terms.

New Law Firm

Marcantel, Hebert and Coco is Jennings newest law firm. Partners of the firm are *District Attorney Bernard Marcantel*, *John Hebert* and *Steve Coco*.

Hebert, who has practiced law in Jennings for the past eight years, was a partner with Marcantel before the latter became district attorney in 1953. Coco has been in Jennings since 1956. Hebert is a graduate of Tulane, Marcantel of the University of Chicago, and Coco of LSU.

Named "Man of Year"

State Rep. L. D. (Buddy) Napper, of Ruston, recently was named Lincoln Parish's "Man of the Year" at the annual Ruston Junior Chamber of Commerce banquet. Presentation of the award was made by *President Jimmie Carter*, following an address by industrialist *Robert G. LeTourneau*.

Napper will compete in the statewide contest for the Louisiana man of the year award, sponsored by the State Junior Chamber of Commerce.

Third Generation Lawyer

Lawrence G. Pugh, Jr., of Crowley, has joined the law firm of Pugh, Buatt and Pugh in that city.

The son of *Lawrence G. Pugh, Sr.*, and grandson of *Philip S. Pugh, Sr.*, who practiced before the Acadia bar for almost 50 years, it is the first time in the history of the Acadia Parish bar that three generations have practiced before it.

The junior Pugh is a graduate of Southwestern Louisiana Institute and the Tulane School of Law.

Means of Achieving Better Cooperation Between Trial Counsel and Home Office

by R. H. Bowling

IT is difficult to prepare a paper on "Cooperation Between Trial Counsel and Company" without perhaps creating the inference that we have problems in this field that need adjusting. It is most difficult to separate cooperation and relationship. One could relate instances where cooperation or lack of cooperation was the decisive factor in winning or losing a law suit. Some insurance company attorneys divide defense counsel into two groups—settling attorneys and trying attorneys. I like the "trying" attorney—a "settling" attorney can be developed.

There should exist between company and defense counsel two distinct relationships; attorney-client, and employer-employee. To travel strictly under either of these would be unwise for both parties. There must be a mutual respect, a free exchange of experience, a concentrated effort to attain a single purpose. There has to be cooperation between trial counsel and company.

Facing Challenge

Now, more than ever, the insurance industry and its defense attorneys are faced with a challenge. There has been more completed automobile accident litigation during 1957 than in all the last three years. Seventy per cent (70%) of all litigated cases arose out of automobile accidents. Such a record is not desired by the company, nor by its counsel. Through our efforts we strive to pre-

serve the integrity of the bar and the high standards of the insurance industry by fair settlement of litigated cases.

"Cost of defense," or to use an unattractive term, "nuisance" value settlements, very often must be given more weight than simply cost. Because of the decisive upward trend in the number of litigated claims the company must look more closely at these so-called "cost of defense" settlements. In some manner the fictitious claim must be eliminated; the meritorious claim should be recognized and paid in full.

New trial techniques, demonstrative evidence, deliberate attempts to set companies up for excess judgments by confusing and intimidating insureds require new thinking and increased vigilance on the part of the company and counsel. To keep abreast of the times we must be alert to what is going on around us. The early conference that will be mentioned later will cement a better relationship between the insured, counsel and insurer. Perplexing questions of liability, settlement value, extent of injuries and rights of parties can be discussed so that the insured is not confused by correspondence from the plain-

Mr. Bowling, of Jackson, Miss., is vice-president of the Southern Farm Bureau Casualty Insurance Company. This talk was presented by the Section of Insurance at the Conference of Local Bar Associations in Alexandria.

tiff's counsel.

Some companies fail to show proper appreciation for the efforts of its defense attorneys. A letter of appreciation for winning a particularly hard case—even when the judgment is held to be a fair one instead of outrageous—the attorney has won a victory deserving praise.

Lest I invite criticism from others in the insurance field or lead some of my attorney friends to believe I would entertain exorbitant fee bills, let me briefly comment on that phase of our relationship. I have found the most generally accepted way to compute a service invoice is to use the cost of office maintenance plus the desired net income of the attorney, or the firm, as a basis for the application of the time factor. The time factor is, of course, the time spent on investigation, research, conferences, trial and appeal. No company can seriously challenge an invoice properly itemized where this formula is used.

Successful defense of litigation today demands the utmost in performance of both trial counsel and company personnel—the company by its investigative efforts, and trial counsel by its application of the knowledge of local law and proficiency in court room experience. In almost every instance the attorney retained by the company to defend its suits does not become active in the case until a considerable time after the occurrence of an accident or injury, therefore, the company's responsibility of preparation for suit is practically completed when the attorney has knowledge of the litigation; thus, the company's obligation in the cooperative effort must necessarily begin far in advance of that of the trial counsel.

A complete investigative file and a

candid divulgence of all the factors that may affect the outcome of the litigation, together with all of the efforts of the company toward negotiation of settlement, must be given to the trial attorney at the time the case is turned over to him for defense. There is certainly a lack of cooperative effort if the company puts counsel "on the spot" by withholding the amount that has been offered in settlement, or by not disclosing any offer which has been made by the plaintiff. In such situations the company may be passively inviting its counsel to make an evaluation which exceeds the amount for which the company could have settled the case. This situation would not be so much a reflection on the ability of the attorney, but more an indication of bad faith and lack of trust on the part of the company. After referring litigation to counsel, the company must not negotiate with the plaintiff without consulting with counsel.

Need for Liaison

The insured seldom looks beyond the company in his relationship with a case, so even after a file has been referred to trial counsel, the company must act as a liaison between counsel and the insured. The local counsel must place himself in the position of the company when analyzing the case. He should determine whether or not there are any questions of coverage. In many cases non-waiver agreements will have been made; in other instances, he will prepare the agreements. The same is true of reservations of rights notices. Furthermore, he should determine if suit demands are within policy limits. If an excess over limits is demanded, proper notice should be sent to the insured.

The attorney should consider the peculiar aspects of public relations and good will during his analysis of the complete case and while making his recommendations to the company for settlement or defense. There are occasions when either company policy or a local situation will have a material effect on this point. The attorney must be alert for conflict of interest and must inform the company, who, in turn, must inform the insured when a conflict does arise.

Local counsel has as his primary duty the interest of the company; therefore, if after assignment to counsel, there arises a question of coverage, the attorney must inform the company in order that a decision may be made as to continuation, or so proper defenses may be set up under the contract. In further fulfillment of the duty of the company to the attorney, close attention should be paid to the character, personality and over-all impression of the clients represented by the attorney and insurer since very often the outcome of the case hinges upon the personalities of the individuals involved and upon the impressions these people make upon judges and jurors in the court room.

After a file has been referred to counsel, the attitude of the company may then travel the route of one of two extremes; it may leave the entire responsibility to trial counsel, or it may meticulously follow the efforts of counsel. Neither of these extremes is healthy to the successful defense of litigation, so that a more middle-of-the-road attitude should be taken by the company. Trial counsel also has extremes in activities. He may appear presenting an almost beligerent (and sometimes a very pessimistic) recommendation that the case be

settled without further litigation. On the other hand, he may create a false sense of security to the company because of his lack of research. This could prove fatal to the company's decision to either try or settle a case.

THERE quite often arises the question as to how completely the company should turn over the control of the case to the local counsel. The solution to this problem is often most difficult and may rest upon the determination of one or more of the factors next discussed. The attorney is well acquainted with the local courts, and, we assume, well versed in the particular law in practice in that state, whereas the company's legal department may have general knowledge of such conditions, but has not confined itself to the everyday practices sufficiently to become acquainted with the smaller details that sometimes will materially affect the outcome of litigation. Most certainly the home office legal department cannot become intimately acquainted with the caliber of attorneys representing the plaintiffs, or of the type of jurors that appear in the local courts.

The company's knowledge of general conditions and trends will be beneficial to the local counsel, particularly so in cases involving medical research. Most home offices are in population centers where expert medical research and evaluation may be obtained, and many companies have doctors on the home office staff to assist in evaluating medical reports from the field. The companies also have large investigative staffs spread over the country so that a simultaneous investigation may be conducted by staff personnel throughout the organization. The local counsel should not hesitate to

call on home office personnel to assist him in such medical research and investigation.

Conference Urged

An immediate conference of the principals involved is the best method in beginning the cooperative effort to defend litigation. At such a conference a personal appraisal of the investigator, trial counsel, the defendant and principal witnesses can be made. After this conference, an analysis of the factual situation can be discussed between trial counsel and the investigator. Then recommendations of both parties should be made to the Home Office. Many investigators inadvertently omit important facts in written reports. These personal conferences bring out those overlooked details and may suggest other leads which would prove beneficial. The early conference of principals in litigation is a must for most companies.

Home Office counsel must keep his finger on the pulse of all company litigation so that another important field of cooperation is presented—that of communications. There should be a feeling of freedom in corresponding, both on the part of the company and local counsel. Too often the recommendations of counsel go ignored by the company for long periods of time, thus holding his efforts at a standstill pending acceptance or disapproval of these recommendations. Valuable time, research and additional investigation may be lost or seriously hampered in this way.

It is felt that the insurance industry generally is remiss in the field of communications, though some of the blame must be shared by local counsel. Because of the problem encountered in keeping

loss reserves and expense reserves current on prolonged litigated cases, companies like to hear from local counsel at regular intervals, even though there is no appreciable change in the status of the case. This desire for status reports is occasioned by the company's desire to change the reserves in the event the injured party develops additional trouble, or makes a more complete recovery than was expected, or perhaps dies. Few practicing attorneys realize the importance of reserves to an insurance company.

Asks Brief Reports

Not all companies appreciate having a long detailed discourse from its counsel. The length of the report often causes the reader to lose the initial trend of thought, or may be the cause of the Home Office overlooking the important point that counsel is attempting to transmit before reaching the conclusion. A large number of status reports need to contain only one line reporting that the situation has not been altered to the knowledge of local counsel.

Transmittals should be brief, but should include all those facts which have been the basis on which local counsel has relied in arriving at his evaluation of the case. Most often correspondence from local counsel indicates quite strongly the caliber of attorney involved. We cannot leave this subject without commenting upon the company's responsibility in this field since very often only a frantic call from the attorney will bring forth the company's reply to his recommendation to settle the case. It sometimes happens that the opportunity to settle the case has been jeopardized because of unreasonable delay by the

company in failing to respond to counsel. Too often companies fail to realize that their local attorneys must practice with their opposition from year to year. A friendly feeling of professional courtesy, trust and admiration of ability develop and are maintained on a local level. The company must take serious recognition of this necessary local climate and assume its share in maintaining it by not embarrassing its attorney by rejecting reasonable recommendations, or causing unreasonable delay in litigated cases.

Team Spirit

Now, how can the company and local counsel best work with the team spirit essential to successful litigation? One cannot escape the very obvious fact that personal contact often cures a lot of ills, and in all instances creates an air of better understanding. Consequently, there should be frequent visits by Home Office counsel in the offices of its local counsel, and a free exchange of ideas and developments in the field of litigation. Having selected its trial counsel, the company must feel that counsel has the company's interests at heart at all times, and also must take the position that appraisals and recommendations made by counsel are based upon a fair analysis of the evidence submitted, of the opposition's competency, personal knowledge of liberality of local jurors, and of the local situations that tend to affect litigation involving insurance. In fairness to the trial counsel, the company should not expect the trial counsel to accomplish the impossible. You cannot expect vast results if you make only half-vast efforts.

Attorneys, as all of us, like to be winners. The company that settles all of its

cases is not in favor with the majority. Generally, the local counsel should be given his fullest authorization early after litigation is commenced in order that he may determine if he will have an opportunity to settle the case, or if he should prepare for trial. In many instances the company is afraid to give the maximum authorization until offers to settle have approached what the company considers to be the value of the case. Such situations reflect a lack of cooperation between company and counsel and could be corrected by a more intimate understanding between these parties. Trial counsel should give the company an early appraisal of material, together with an unbiased evaluation, rather than confronting the company with a last-minute frantic preparation for trial.

In summary, successful litigation or successful termination by settlement requires complete cooperation between the local attorney and representatives of the company. It must always be borne in mind that in every instance we are dealing with human problems, and varying conditions; that the facts of every claim or suit are different and involve different problems which have to be met as they arise. While it is necessary for the companies to have certain policies and regulations to guide its personnel, these should be flexible. The problems of the claimant, opposing counsel and even the companies' local counsel vary considerably. The methods of procedure and the local conditions vary. These elements require that local counsel and the company representatives have a meeting of the minds and cooperate to the fullest so that a proper and satisfactory result is reached.

Notes on New Books

Corporate Law Textbook

Basic Corporate Practice, by George C. Seward, of the New York Bar; published by the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association; 168 pages; \$3.00.

This is a textbook on the practical aspects of corporation law practice. It discusses the advisability of incorporation; planning and organizing the corporation; how to maintain its affairs properly; state and federal regulation of sales of securities; how to solve the problems of control in closely-held corporations; dividend action, and acquiring and disposing of a business. Forms are included for each of the important transactions discussed in the text.

Written from the standpoint of a practical lawyer, the book points up the important tax considerations which arise in almost every transaction.

The author is a New York City lawyer who specializes in corporation practice. In addition, he is vice-chairman of the Section of Corporation Banking and Business Law of the American Bar Association and has been since 1952 chairman of that section's Committee on Corporate Laws. Also he is chairman of the American Bar Foundation's Special Committee on Annotation of Model Corporation Acts.

Mineral Law Review

The Louisiana State University Press announces the recent publication of the *Proceedings of the Fifth Annual Mineral Law Institute*, edited by Harriet S. Daggett; 280 pages; \$7.50.

Like its distinguished predecessors, this latest volume of proceedings features a review of the year's legal decisions and expert discussion of the year's developments and pressing problems. This compilation comprises nine authoritative articles on a wide variety of topics, including:

"Financing of Oil and Gas Interests," by A. E. Alexander.

"Application of Curative Statutes in Land Title Examinations," by James L. Helm.

"Income Tax Consequences of Lease and Sale of Mineral Interests," by Abner E. Hughes.

"Louisiana's Title in the Gulf of Mexico," by W. Scott Wilkinson.

"Well Spacing," by Rupert Craxe and J. W. Glanville.

"The Year's Decisions: Unitization," by Horace M. Holder.

"The Year's Decisions: Federal Cases," by Alvin L. Rubin.

"The Year's Decisions: Louisiana Appellate Court," by Walter B. Suthon, Jr.

"Conservation Department Developments of the Year," by John B. Hussey.

This book is a necessity for oil and gas executives, attorneys, judges and all others who must have complete, current and reliable information on the many areas related to the field of mineral law.

Harriet S. Daggett, Professor of Law at Louisiana State University, is an authority on mineral law and community property law. She edited the four previous volumes of the Mineral Law Institute as well as other books.

Association of Legal Secretaries Stresses Better Office Practices

by Mrs. Anita L. Leigh

JUST a little over twenty-eight years ago, in Long Beach, California, W. L. Girard, attorney and deputy county clerk, loudly lamented, "What a day! Nothing but incorrectly prepared documents by 'purported' legal secretaries."

This unpleasant tirade was directed toward Eula Mae Smith, a young, inexperienced high school girl on her first job. As she tearfully retyped the last of the offending papers, he paced the floor and continued, "I have often wondered why you 'legal secretaries' don't get together and find out just what is required in the preparation and filing of legal documents."

Suggests Club

The suggestion stayed in Miss Smith's mind until the following week when she lunched with five other secretaries employed in local law offices. She asked them, "Why don't we form a club for the benefit of legal secretaries? We could share our experience, and perhaps girls who have been in legal work for a long time would help us." The idea appealed to all of them, and shortly thereafter these six girls, with the co-operation of their employers, founded in Long Beach the first "Legal Secretaries Association." It was a brave, but small beginning.

Mrs. Leigh, of St. Louis, currently is serving as public relations director of the National Association of Legal Secretaries.

The organization soon acquired other members, some with years of experience which they shared with the beginners in legal work. This proved so helpful to both the secretaries and their employers that similar organizations were rapidly formed throughout California and in other states, including Illinois, Arizona, Iowa and Tennessee.

Finally, on July 5, 1950, the National Association of Legal Secretaries was incorporated under the laws of the State of California.

News of the organization spread, and chapters were chartered in Alaska, Florida, Hawaii, Idaho, Kansas, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Texas, Utah, Washington, and West Virginia. A total of eighty-three chapters are now chartered. In addition, by means of members-at-large, in cities where there are no associations, eighteen additional states are represented, making a total membership of over 5,000. It is good to note that among our best advocates are lawyers who have worked with association members in past years.

Training Programs

The association is nonpartisan, non-union, nonsectarian, and nonprofit. The association, through its chapters, sponsors legal education training programs for women desiring to become legal secretaries with a curriculum which covers

legal office routine, office manners, the various types of litigation and legal procedure, and the pleadings, forms, and documents used therein. The courses are brief enough to enable the student to complete them in a comparatively short time, and do not include shorthand or typing.

The association is interested in helping legal secretaries all over the United States to form new chapters in their own cities, to offer additional training free of charge, to raise the standards and status of the legal secretary, and to make her of greater value to her employer as well as giving her a feeling of pride that she is a member of this profession. The association is not a union, and the members never discuss wages and hours. The members are often referred to as "Sisters-in-Law."

Code of Ethics

The code of ethics vowed to be kept by every member is a vital part of the organization:

"The first duty of a legal secretary is loyalty to her employer.

"It shall be the duty of every legal secretary to maintain at all times a high standard of courtesy in all contacts with law offices, clients, courts and any and all persons.

"It shall be unethical for any legal secretary to violate any statute now in effect or to be enacted governing privileged communications.

"It shall be unethical for any secretary or employee of any law office to divulge the contents of any documents in the possession of her employer without first having obtained the consent of said employer, or to discuss, maliciously or otherwise,

with any person, matters of a confidential nature, knowledge of which may come to her by virtue of her employment.

"It shall be the duty of every legal secretary to maintain harmonious co-operation with her associates."

Secretary of Year

The organization elected its first "Legal Secretary of the Year" from entries submitted by each chapter in 1957. Mrs. Jean Hecker is the first "Legal Secretary of the Year" and is a member of the Los Angeles Legal Secretaries Association. She has a law degree and has been secretary to William J. Cusack of Los Angeles for 28 years.

Mrs. Florence Whalen of Fargo, North Dakota, and Mrs. Pat Brady of Beverly Hills, California, were elected No. 2 and No. 3 Legal Secretary of the Year, respectively.

The National Association of Legal Secretaries does not send out highly paid registrars to form new chapters, but depends upon an interested local group to form the nucleus from which a chapter grows. The national organization assists in forming the local chapters, providing the necessary forms from the printed invitation to a charter meeting to a model set of by-laws. Other costs of organization and operation are borne by the chapter members.

At the present time there are no associations in the state of Louisiana. Inquiries regarding the educational and social opportunities offered to legal secretaries and the formation of new associations or membership-at-large may be addressed to the National President, Mrs. Rhoda V. Polley, 610 Scripps Building, San Diego, California.



COMMITTEE AND SECTION REPORTS

ADMIRALTY RULES COMMITTEE

Rule 44 of the Supreme Court makes provisions for the regulation by the District Courts of their practice in all cases "not provided for by these rules or by statutes", the rule being quoted:

"In suits in admiralty in all cases not provided by these rules or by statute, the District Courts are to regulate their practice in such a manner as they deem most expedient for the due administration of justice, provided the same are not inconsistent with these rules."

The mandate from the Court was to prepare and submit a modern up-to-date draft of the proposed rules. The committee used as a point of departure the Admiralty Rules of the United States District Courts for the Southern and Eastern Districts of New York since the admiralty dockets of these courts are probably the most active in the United States. The rules adopted by these courts were a result of careful study by active competent proctors in that area and were considered excellent. However, due attention was given to the admiralty rules adopted by other United States District Courts, particularly to those presently used by the United States District Court for the Eastern District of Louisiana.

In drafting the projet of the Admiralty Rules for the U. S. District Court for the Western District of Louisiana, the committee has been mindful of the restrictions prescribed by the Rules of Practice in Admiralty and Maritime Cases of the United States Supreme Court, and endeavored to work within that framework, giving due recognition of the laws of the United States and State of Louisiana.

In its work, where a subject was covered by the Rules of Practice in Admiralty and Maritime Cases of the

United States Supreme Court, the committee took the position that nothing further was required. It was also felt that it was not appropriate to adopt by reference parts of the Federal Rules of Civil Procedure; by definition, such do not pertain to admiralty. However, it will be noted that in several instances the principle of Federal Rule of Civil Procedure has been adopted or even suggested verbatim.

The work is a joint effort of two committees. One is the committee appointed by the judges of the United States District Court for the Western District to draft the rules as follows:

Richard A. Anderson, Lake Charles, Chairman

William R. Tete, Lake Charles

John A. Hickman, Lake Charles

The other is the Admiralty Committee of the Louisiana State Bar Association, composed of:

Richard A. Anderson, Lake Charles, Louisiana

Robert E. Leake, Jr., New Orleans

Pat F. Bass, New Orleans

Alfred M. Farrell, Jr., New Orleans

Clarence M. East, Jr., (Loyola School of Law) New Orleans

Malcolm W. Monroe, New Orleans

William B. Dreux, New Orleans

With the permission of the Court, in order to be able to utilize its experience, the Admiralty Committee of the Louisiana State Bar Association was integrated into the other committee. The two committees thereafter functioned as one.

Benjamin W. Yancey of New Orleans (practicing attorney, Admiralty Professor (L.S.U.) and an associate editor of American Maritime Cases) gave freely of his time as "official consultant". Eli Ellis of the New York bar promptly answered questions as to practice under the New York

rules. John W. Sims of the New Orleans bar gave valuable advice to the chairman from time to time. Messrs. M. L. Cook and Sweeney J. Doebring, capable experienced proctors of the Texas bar, extended a detached practical review of the projet, furnishing valuable comment. And, the official support of the Louisiana Bar Association, both financial and through the guidance and encouragement of two successive presidents, Honorable Clarence Yancey of Shreveport (1956-57) and Honorable J. J. Davidson of Lafayette (1957-58) was of moving importance.

To all of these, for extended, difficult and helpful labors which were rendered in developing the projet of the rules, and to the attorneys who so ably drafted the Admiralty Rules for the Southern and Eastern District of New York, the chairman acknowledges a deep sense of appreciation, to the end that the work of the Court may move in its "proper manner, place and motion."

Richard A. Anderson,
Chairman

NEW ORLEANS JUNIOR BAR COMMITTEE

ON November 19, at the Roosevelt Hotel in New Orleans, the Junior Bar Committee of the New Orleans Bar Association elected as officers for the coming year: Thomas C. Wicker, Jr., chairman; David J. Conroy, vice-chairman; Val A. Schaff III, secretary; and Peter H. Beer, Harold J. Lamy, John G. Weinmann, James O. Manning, Ralph D. Dwyer, Jr., and John E. Jackson, Jr., members of the board.

The purpose of the Junior Bar Committee is to further the objectives of the New Orleans Bar Association among the younger members of that organization. In keeping with this basic program the committee has undertaken several ambitious activities.

The sub-committee on Continuing

Legal Education conducted its first program on December 19 at Tulane University. David R. Normann, of the New Orleans Bar, spoke on the subject, "Some practical suggestions for the trial of a damage suit before a jury in the Federal Court". At the conclusion of Mr. Normann's talk, a general discussion was engaged in by the members present. The committee on Continuing Legal Education intends to sponsor at least two other programs during this year on subjects of general interest to the members.

The sub-committee on Legal Aid has enlisted the support of forty members of the Junior Bar Committee to participate in the Legal Aid program. It is felt that the sub-committee will be of definite assistance to the Legal Aid Bureau in the City of New Orleans.

The sub-committee on Professional Courtesy is considering various ways and means of improving professional courtesy among members of the bar generally, and particularly among younger members of the bar.

The sub-committee on Public Relations is studying various methods of acquainting the public with some of the activities of attorneys generally, with the view of increasing the prestige of attorneys in the community.

To date, the Junior Bar Committee of the New Orleans Bar Association has been very active and many fine things are expected of this organization.

Thomas C. Wicker, Jr.
Chairman

Coming Attraction . . .

Annual Meeting of the
Louisiana State Bar Association
at Biloxi, Miss., April 23-26
Don't Miss It.!

Local Bar Association Roster

(Compiled by Judicial Districts)

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717 Com'l National Bank Bldg.
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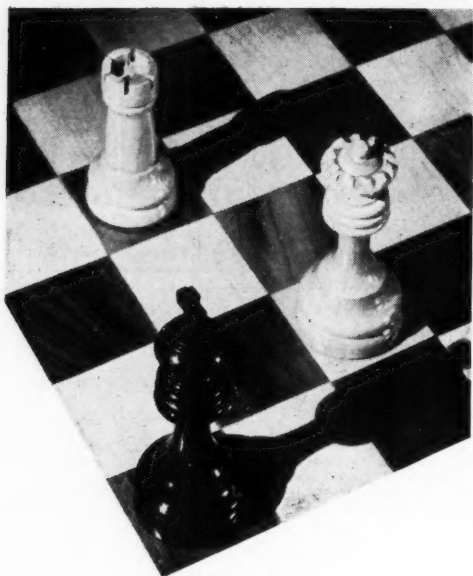
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